SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~423~~ 5

FRED L. SHUTTLESWORTH, PETITIONER,

vs.

CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

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[fol. 1]

IN THE CIRCUIT COURT OF THE

TENTH JUDICIAL CIRCUIT OF ALABAMA

IN AND FOR JEFFERSON COUNTY

No. 23953

THE STATE, CITY OF BIRMINGHAM,

vs.

F. L. SHUTTLESWORTH.

ORGANIZATION OF COURT

At a regular term of the Circuit Court of the Tenth Judicial Circuit of Alabama, at which the officers authorized by law to hold or serve said Court were serving, the following proceedings were had in cause styled:

IN THE CIRCUIT COURT OF THE

TENTH JUDICIAL CIRCUIT OF ALABAMA

CITY OF BIRMINGHAM

APPEAL BOND—Filed May 18, 1962

The State of Alabama,
Jefferson County.

We, Fred L. Shuttlesworth, principal and James Esdale sureties, acknowledge ourselves indebted to the City of Birmingham, a municipal corporation, in the sum of Three Hundred Dollars, for the payment of which, well and truly to be made, we bind ourselves, our administrators, and executors. But the condition of the above obligation is such, that whereas the above bounden principal was tried and convicted on the charge of Count 1. Violation Section 1142-G.C.C. As amended Ordinance 1436 F. Count 2. Violation

Section 1231-G.C.C. and has prayed and obtained an appeal to the Circuit Court of Jefferson County, Alabama, from the judgment of the Recorder's Court of the City of Birmingham, adjudging him to pay a fine of One Hundred Dollars, Costs Five Dollars; Fees none Dollars, and to perform hard labor for 180 Days, rendered the 5 day of April 1962.

Now, if the said principal shall appear at present Term of the Circuit Court of Jefferson County, Alabama, and from term to term thereafter until discharged by law, then this obligation to be void, otherwise to remain in full force and effect. And as against this obligation we waive all right under the laws of Alabama to claim any personal property as exempt from levy and sale.

Witness our hand and seals this 5 day of April 1962.

F. L. Shuttlesworth (L.S.) 3164 29 Ave N
James Esdale (L.S.) 809 No 21st St. Bham.

By A. E. Brooks (L.S.) Atty in fact

[fol. 2] Approved 5th day of April 1962.

Chas. H. Brown, Recorder of the City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 23953

[Title omitted]

COMPLAINT—Filed in Open Court October 29, 1962

Count One

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that F. L. Shuttlesworth, within twelve months before the beginning of this prosecution

and within the City of Birmingham, or the police jurisdiction thereof, did stand, loiter or walk upon a street or sidewalk within and among a group of other persons so as to obstruct free passage over, on or along said street or sidewalk at, to-wit: 2nd Avenue, North, at 19th Street or did while in said group stand or loiter upon said street or sidewalk after having been requested by a police officer to move on, contrary to and in violation of Section 1142 of the General City Code of Birmingham of 1944, as amended by Ordinance Number 1436-F.

Count Two

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that F. L. Shuttlesworth, within twelve months before the beginning of this prosecution and within the City of Birmingham, or the police jurisdiction thereof, did refuse to comply with a lawful order, signal or direction of a police officer, contrary to and in violation of Section 1231 of the General City Code of the City of Birmingham.

William C. Walker, Attorney for City of Birmingham.

[File endorsement omitted]

[fol. 3]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 23953

[Title omitted]

MOTION TO QUASH—Filed in Open Court October 29, 1962

Comes now the defendant in this cause, and respectfully shows unto this Honorable Court the following facts:

1. That this defendant was arrested on to-wit, April 4, 1962, and charged with the violation of Sections 1231 and 1142 of the General City Code of Birmingham, 1944.

2. That said arrest came as a result of defendant walking the streets in downtown Birmingham.

3. The complaint is not sufficient to support the ordinance under which the defendant was arrested.

4. The affidavit, or information, or warrant, alleging that the defendant violated Sections 1231 and 1142 of the General City Code of Birmingham, 1944, is so broad that the defendant is not sufficiently apprised of what he is called upon to defend against, and, therefore, the charge is vague, indefinite and uncertain.

5. The affidavit, or information, or warrant, upon which this cause is based is insufficient to support prosecution in this cause, in that no offense is alleged which is cognizable by this Honorable Court.

6. That the allegations of the complaint, and each count thereof, are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

7. The said Sections 1231 and 1142, of the 1944 General City Code of Birmingham, under which said complaint is brought, as applied to this defendant, violates Section 4, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

8. That the aforesaid Sections 1231 and 1142 as applied [fol. 4] to the defendant is unconstitutional on its face, and that it is so vague, as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment of the United States.

9. That the said Sections 1231 and 1142 as applied to the defendant, constitutes an abridgement of privileges and immunities guaranteed defendant as a citizen of the United States in violation of the Fourteenth Amendment to the United States Constitution.

10. That the said Sections 1231 and 1142, as applied, constitute a denial of the equal protection of the laws, in

violation of the Fourteenth Amendment to the Constitution of the United States of America.

11. For that said complaint is vague, indefinite and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

12. For that said statute is on its face unconstitutional in that it deprives the defendant of the due process of law under the 14th Amendment to the United States Constitution and it violates Article 1, Section 6, Alabama Constitution, 1901.

Respectfully submitted,

Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 23953

[Title omitted]

DEMURRERS—Filed in Open Court October 29, 1962

Comes now F. L. Shuttlesworth, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That Sections 1142 as amended by Ordinance No. 1436, and 1231 of the 1944 General City Code of Birmingham, Alabama, are invalid in that they violate Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Sections 1142 as amended by Ordinance No. 1436 and 1231 of the 1944 General City Code of Birmingham, Alabama, which supports the complaint, affidavit or information in this cause, constitutes an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinances are unconstitutional on [fol. 6] their face in that they are so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That said Ordinances or Statutes constitute an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That said Ordinances constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Orzell Billingsley, Jr., Attorney for Defendant.

[File endorsement omitted]

[fol. 7]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 23953

[Title omitted]

MOTION TO EXCLUDE THE TESTIMONY AND FOR JUDGMENT—Filed in Open Court October 29, 1962

Comes now F. L. Shuttlesworth, defendant in this cause after all of the testimony and evidence for the City of Birmingham has been given and received and moves this court to exclude said testimony and evidence and to give judgment for defendant, and as grounds for said Motion sets out and assigns the following, separately and severally:

1. The City of Birmingham has not made a case against this defendant, under either count of the complaint in this cause.

2. All of the testimony and evidence given in this cause indicates that defendant during the time and on the occasion in question merely was exercising rights and privileges given to him as a citizen of the City of Birmingham and of the United States of America by the laws and the constitution of the State of Alabama, and by the First and Fourteenth Amendments to the Constitution of the United States of America.

3. There has been absolutely no evidence introduced by the City of Birmingham to support the complaint or warrant in this cause.

4. All of the testimony and evidence offered by the City of Birmingham does not prove defendant guilty of any violation of a Municipal Ordinance during the time in question.

Orzell Billingsley, Jr., Peter A. Hall.

[File endorsement omitted]

[fol. 8]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 23953

[Title omitted]

MOTION FOR NEW TRIAL—
Filed in Open Court October 30, 1962

Now comes the defendant, F. L. Shuttlesworth, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit, the day of , 1962, and that this Honorable Court will grant the said defendant a new trial, and as grounds for said Motion sets out and assigns the following:

1. That the verdict of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the verdict of the court is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the verdict of the court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. The Court erred in overruling defendant's demurrers, filed in this cause.

9. The Court erred in overruling defendant's Motion to Quash.

10. The Court erred in overruling the defendant's Motion to exclude the evidence in this cause.

11. For that the Court erred in sustaining objections, by the City of Birmingham, to evidence the defendant sought to introduce in his behalf in this cause.

[fol. 9] 12. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant constituted an abridgement of freedom of speech, violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

13. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

The foregoing Motion being presented this 30th day of October, 1962, is hereby set for hearing before the Honorable George Lewis Bailes, Judge, on the day of , 1962, at o'clock, .M.

....., Judge.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 10]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

[Title omitted]

Appealed from Recorder's Court

(Violating Section 1142 and Section 1231,
General City Code)

Honorable Geo. Lewis Bailes, Judge Presiding.

JUDGMENT ENTRY

This the 29th day of October, 1962, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and defendant withdraws jury demand and the City of Birmingham files written Complaint in this cause, and the defendant files motion to quash said complaint and said motion to quash being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled; and the defendant files demurrers and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, and said defendant being duly arraigned upon the Complaint in this cause, for his plea thereto says that he is not guilty and the defendant files motion to exclude the testimony and for judgment and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled.

This the 30th day of October, 1962, the defendant renews his motion to exclude the testimony and for judgment and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled.

Upon consideration of the pleadings and evidence submitted in this cause, the Court is of the opinion that the defendant is guilty as charged in the Complaint and it is therefore the judgment and sentence of the Court that said

defendant is hereby sentenced to pay a fine in the sum of One Hundred Dollars ($100.00) and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of One Hundred Dollars [fol. 11] ($100.00) and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law that the defendant, the said F. L. Shuttlesworth, perform hard labor for the City of Birmingham for 52 days, because of his failure to pay said fine of $100.00 and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law that the defendant, the said F. L. Shuttlesworth, perform additional hard labor for the City of Birmingham for 180 days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to Twenty-eight and 45/100 Dollars ($28.45), not being presently paid or secured, and $4.00 of said amount being, State Trial Tax $3.00 and Law Library Tax $1.00, leaving Twenty-four and 45/100 Dollars ($24.45) taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for nine days, at the rate of $3.00 per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended, including the costs of feeding the defendant while in jail, for which let execution issue.

This the 30th day of October, 1962, said defendant files motion for new trial and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled.

This the 30th day of October, 1962, Notice of Appeal being given and it appearing to the Court that, upon the [fol. 12] trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at Three Hundred Dollars ($300.00), conditioned as required by Law.

[fol. 13]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

APPEAL BOND TO COURT OF APPEALS—Filed October 30, 1962

Appeal Bond—Hard Labor Sentence

The State of Alabama
Jefferson County

Know All Men by These Presents, That we F. L. Shuttlesworth principal, and Jas. Esdale; Willie Esdale & Esdale Bail Bond Co., as sureties, are held and firmly bound unto the State of Alabama in the sum of Three Hundred & no/100—Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; and we and each of us waive our rights of exemption under the Constitution and laws of the State of Alabama as against this bond.

The Condition of the Above Obligation Is Such, That whereas, the above bounden F. L. Shuttlesworth was on the 30 day of Oct. 1962, convicted in the Circuit Court of Jefferson County, Alabama, for the offense of VS 1142 & 1231 and had assessed against him a fine of One Hundred & no/100—Dollars, together with the cost of this prosecution, and on the 30 day of Oct. 1962, on failure to pay fine was

sentenced to perform hard labor for the City of Birmingham for 180 days, and an additional term for the cost, at the rate of seventy-five cents per day, and as additional punishment imposed the defendant was sentenced to perform hard labor for the County for ....., from which sentence the said F. L. Shuttlesworth has this day prayed and obtained an appeal to the Court of Appeals of Alabama.

Now, If the Said F. L. Shuttlesworth shall appear and abide such judgment as may be rendered by the Court of Appeals, and if the judgment of conviction is affirmed, or the appeal is dismissed, the said F. L. Shuttlesworth shall surrender himself to the Sheriff of Jefferson County, at the County Jail, within fifteen days from the date of such affirmation or dismissal, then this obligation to be null and void, otherwise to remain in full force and effect.

Given under our hands and seals, this the 30 day of Oct. 1962.

[fol. 14] F. L. Shuttlesworth (L.S.), Jas. Esdale (L.S.), Willie Esdale (L.S.), By Jas. Esdale, Atty in fact (L.S.), Esdale Bail Bond Co. (L.S.), By Jas. Esdale.

Approved: Oct. 30, 1962, Julian Swift, Clerk of the Circuit Court of Jefferson County.

[File endorsement omitted]

[fol. 15] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
CRIMINAL DIVISION
No. 23953

CITY OF BIRMINGHAM, Plaintiff,

vs.

F. L. SHUTTLESWORTH, Defendant.

Transcript of Hearing—October 29 and 30, 1962

The Above-styled Cause came on to be heard before the Honorable George Lewis Bailes, Judge, commencing on October 29, 1962, at 10:50 A.M., when the following proceedings were had and done:

APPEARANCES

William C. Walker, Assistant City Attorney, Birmingham, Alabama, for the Plaintiff.

Peter Hall, and Orzell Billingsley, Attorneys at Law, Birmingham, Alabama, for the Defendant.

Reported by Jimmie Crumley

PROCEEDINGS

Mr. Walker: Is it all right to try these two cases together?
Mr. Billingsley: Yes, sir.
Mr. Walker: The charges are identical.
The Court: Counsel ready?
Mr. Walker: Yes, sir, Your Honor.
Mr. Billingsley: We are ready, Your Honor.
Mr. Hall: If Your Honor please, we have a motion to quash the complaint.

Mr. Walker: Judge Bailes, I would like for the record to show that by agreement or stipulation the case of James S. [fol. 16] Phifer, No. 23944, and Fred L. Shuttlesworth, No. 23953, will be consolidated and tried together, the City being the Plaintiff in each case.

Mr. Billingsley: Your Honor, before proceeding the Defendant would like to file a motion to quash in both cases, No. 23953 and 23944.

The Court: Are they identical?

Mr. Billingsley: Yes, sir.

The Court: Let the motions be overruled.

Mr. Billingsley: Take exception.

Your Honor, at this time the Defendants would like to file demurrers in both cases.

The Court: I imagine in substance the same legal principles are set out?

Mr. Billingsley: Well, generally you might say with few exceptions.

The Court: Well, let the demurrers be overruled.

Mr. Billingsley: We take exception.

Your Honor, we would like to ask for the rule.

(Whereupon the rule as to witnesses was invoked.)

EVIDENCE ON BEHALF OF THE CITY

Officer ROBERT L. BYARS, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, please, sir.
A. Robert L. Byars, Jr.
Q. What is your occupation?
A. Police patrolman, City of Birmingham, Alabama.
Q. How long have you been so employed?
A. Four years.
Q. Do you know the defendants in this case?
A. At the present time, yes, sir.

Q. Would you point them out, please?

A. The one with glasses on is Defendant Phifer, the [fol. 17] other is Defendant Shuttlesworth, the second one to the left.

Q. Now, Officer Byars, did you have an occasion to see these defendants, or either of them, on or about April 4th of 1962?

A. Yes, sir, I did.

Q. About what time did you first see the defendants?

A. Approximately 10:30 A.M.

Q. Now, tell the Court where you were at the time you first saw the defendants?

A. I was located just north of the alley between 2nd and 3rd Avenue North on 19th Street in the City of Birmingham.

Q. Was that at the alley?

A. Yes, sir, just north of the alley, on the west side of 19th Street.

Q. Where is that in relation to Newberry's Department Store?

A. It would be to the north.

Q. Was it close to Newberry's Department Store?

A. Yes, sir.

Q. Where was the defendants at that time?

A. They were walking south on 19th Street towards 2nd Avenue North.

Q. Did you know who they were at that time?

A. Not by name, no, sir.

Q. Were the defendants alone or in company or—

A. They were in company with three or four other people.

Q. What did you see the defendants do then, if anything?

A. I saw them walk south on 19th Street, and as they got farther toward 2nd Avenue I entered the alley entrance to Newberry's store.

Q. Now, what was the last thing you saw the defendants do at that time?

A. Walking south on 19th Street towards 2nd Avenue on the west side.

Q. Did you go into Newberry's store?

A. Yes, I did.

Q. Did you have occasion to see the defendants thereafter?

A. I walked in Newberry's store and walked up to the [fol. 18] front entrance, which is located on the northwest corner of the intersection of 2nd Avenue and 19th Street; I saw them outside the store standing with a group of some ten or twelve people all congregated in one area.

Q. And these defendants were members of that group?

A. Yes, they were.

Q. Now, was there any other pedestrian traffic at that time?

A. There was some people moving back and forth.

Q. Were they members of this group that was standing there?

A. Not the ones moving, no, sir.

Q. Were the ones that were walking along there, were they able to walk down the street without any obstruction?

A. No, sir. On some occasions people who were walking in an easterly direction on the north side of 2nd Avenue had to go into the street to get around the people who were standing there.

Q. What was this group of people doing, if anything?

A. Standing and listening and talking.

Q. How many people in your opinion was in the group?

A. In my best judgment ten or twelve people.

Q. Was that more than was in the group you saw walking beside Newberry's store when you were at the alley?

A. Yes, sir.

Q. There was more?

A. Yes, sir.

Q. Now, where was this group of people standing?

A. They were standing in the western half of the western cross walk of 2nd Avenue and 19th Street North.

Q. Is that on the same corner that Newberry's is on?

A. Yes, sir, it is.

Q. Where were you when you first saw them standing on this corner?

A. I was inside Newberry's store.

Q. You had walked from the alley entrance to the front entrance through the store?

A. Yes, sir.

[fol. 19] Q. Did you observe the defendants in the group for any length of time?

A. In my best judgment for a minute to a minute and a half while they stood.

Q. What did you do then after observing them, if anything?

A. I walked out of the store and informed the group of people they would have to move on and clear the sidewalk so as to allow free passage and not to obstruct it.

Q. What did you tell them again, please?

A. I told them they would have to move on and clear the sidewalk and not obstruct it for the pedestrians.

Q. What did they say or do, if anything?

A. Well, some of the group began to move gradually away.

Q. What happened then? Just tell in your own words.

A. Not all of them began to move, and I waited for a short time and again informed them they would have to move and not obstruct the sidewalk and allow free passage for the pedestrians east and west, at which time the Defendant Shuttlesworth stated, "You mean to say we can't stand here on the sidewalk?"

Q. What did you say in response?

A. I said nothing in return. I only hesitated again for a short time and informed them for the third and last time I was informing them they would have to move and clear the sidewalk or else they would be placed under arrest for obstructing the sidewalk, at which time the Defendant Shuttlesworth responded with the statement, "Do you mean to tell me we can't stand here in front of this store?" At which time I informed him he was under arrest. And then he said, "Well, I will go into the store," and started toward Newberry's department store.

Q. What happened then, if anything?

A. He got inside the door and I reached and got him and told him again he was under arrest.

Q. When you arrested the defendant on that occasion, what happened, if anything?

[fol. 20] A. I took him into custody and walked with him with my hand placed on his arm, after having informed him he was under arrest, to the west curb just north of 2nd Avenue on 19th Street.

Q. Did you ever see the Defendant Phifer at that time or about that time?

A. After Defendant Shuttlesworth had been placed into custody and taken to the west curb to await transportation to the City Jail the Defendant Phifer approached and began conversing with the Defendant Shuttlesworth.

Q. What happened then, if anything?

A. I informed the Defendant Phifer that Shuttlesworth was under arrest and in custody of the Police Department and he was not able at this time to talk with him since he was a prisoner.

Q. What happened? Did the Defendant Phifer cease talking to the Defendant Shuttlesworth?

A. The Defendant Phifer continued to talk with him.

Q. What happened then, if anything?

A. I informed him if he did not move away and discontinue his conversation with the Defendant he too would be placed under arrest and taken to the City Jail.

Q. Did you arrest the Defendant Phifer?

A. Yes, I did.

Q. When you first observed the group that was standing on the corner at Newberry's do you know if the Defendant Phifer was in that group?

A. I didn't know him by his name, but he was in the group present at that time.

Q. Did you see the Defendant Phifer when you first saw the Defendant Shuttlesworth walking down 19th Street?

A. He was with Shuttlesworth, but again, I did not know him by name at that time.

Q. Did either of these two defendants, or any other person in their presence that was in the group they were in, did any of them state their purpose for being on the street corner?

A. No other person made any statement to me other than [fol. 21] the Defendant Shuttlesworth and the Defendant Phifer.

Q. And what statements did they make, if any?

A. Shuttlesworth stated, "We are just standing here on the street." On the second occasion he stated to me, "Do you mean to tell me we can't go into the store?" And on the third occasion he stated, "Well, I will go in the store."

Q. But he was under arrest at that time?

A. No, not at that time. At the time of the last statement when he said, "We will go into the store," he had been placed under arrest at that time.

Q. You testified a moment ago some pedestrians had to step off the curb. Was traffic heavy at that time—pedestrian traffic?

A. I would say it was normal for a Wednesday at that particular time of day.

Q. And you saw some people step off the curb?

A. Yes, sir.

Q. Was that necessary?

A. Due to the people moving in a westerly direction along 2nd Avenue they would have had to have waited until those people got by or either elect to go onto the street to pass the group of people standing there.

Mr. Walker: I believe that is all.

Cross examination.

By Mr. Hall:

Q. Mr. Byars, I am going to attempt to draw a picture of the intersection and I hope I can get a reasonable facsimile. (Drawing on blackboard) Now, this is 19th Street and this is 2nd Avenue. This is Newberry's. (Indicating) Do you understand what I am trying to draw here? 19th Street running up and down from north to south and intersects with 2nd Avenue.

A. I understand.

Q. This is the Newberry's corner right on the northwest corner of that intersection. I believe you testified with

reference to some phone booth and some telephone poles there at that corner. About where would you say that phone booth is?

[fol. 22] A. I don't recall testifying to a telephone pole or telephone booth.

Q. Well, you did in the police court, let's say.

A. I did in the police court, yes.

Q. Do you recall ever having testified about the phone booth?

A. Yes, I do.

Q. Would you say there is a phone booth there?

A. There was at that time.

Q. About where was it?

A. There are two poles located and a telephone booth.

Q. Would you mind showing us on that picture, please, sir, about where the poles are and where the booth is?

A. If I have permission, I will show you the cross walk too.

Q. Yes, sir, fine, the entire setup.

A. I would say the phone booth is approximately here, and the poles on each side (drawing on diagram).

Q. Now, where is the cross walk east to west on 19th Street?

A. (Indicating).

Q. Now, Mr. Byars, with reference to this particular intersection, the phone booth and the crosswalk, where would you say the Defendants were standing at the time you made the arrest?

A. Just east and north of the cross walk on the sidewalk.

Q. Would you show us again?

A. (Indicating on diagram).

Q. Now, Mr. Byars, they were standing about where you drew that little X mark?

A. That is where the Defendant Shuttlesworth was.

Q. That left more than half of the north-south cross walk free, is that correct?

A. If he was there alone would it have left it?

Q. Well, we are only concerned with these defendants,

Mr. Byars. We don't know what other persons made up the crowd.

A. Would you restate the question?

Q. I say assuming the defendants were standing where [fol. 23] you drew that little mark there, that would have left more than half of your north-south cross walk free, would it not?

A. That is true.

Q. And they didn't block the east-west cross walk at all, did they?

A. They did not.

Q. Now, Mr. Byars, what is your rank, please, sir?

A. Patrolman.

Q. How long have you been with the Birmingham Police Department?

A. About four years.

Q. Have you had occasion before April 4, 1962 to arrest the Defendant Shuttlesworth?

A. Never.

Q. Have you been present on occasions when he has been tried in the City court or any other court?

A. Never.

Q. Do you know the Defendant Shuttlesworth or Phifer by sight or reputation before April 4, 1962?

A. I did not.

Q. You had never heard of either of these two people?

A. I had heard of them.

Q. You knew that they had been frequently arrested by the police of the City of Birmingham, did you not?

A. Not to my knowledge that they had been frequently arrested.

Q. You did not know that they had been—you were not aware of that fact on April 4, 1962?

A. Other than what I read.

Q. You had read that they had been frequently arrested?

A. But that does not make me aware of it.

Q. You had read it in the daily newspapers?

A. I am still not aware of it. I had read it, yes.

Q. How many times had you read about the Defendant Shuttlesworth's arrest prior to that?

Mr. Walker: We object to the number of times he read [fol. 24] about—I think the Court would probably take judicial notice of the history of—

The Court: Let him answer if he can.

A. I believe on two occasions I had read of his arrest.

Q. Did you know on the occasion of his arrest on April 4, 1962 he and the Reverend Phifer, the other defendant, had just been released from jail?

A. I did not.

Q. You didn't read that in the daily newspapers?

A. No.

Q. You didn't see it on the television shows?

A. No.

Q. You didn't hear it on the radio?

A. I did not.

Q. You had not read prior to that time that he had been imprisoned for more than a month?

A. I was aware that he had been in the City Jail.

Q. You had never seen his picture before that time?

A. I believe so.

Q. You had seen him on the television screen before that time?

A. I believe so.

Q. You were familiar with his face and features, were you not?

A. I was not.

Q. Tell me, Officer Byars, what was your usual duties on April 4, 1962?

A. I was in charge of the direction and movement of all traffic at 3rd Avenue and 19th Street and four blocks in an east, west, north and south direction.

Q. What are your duties now, Officer Byars?

A. The same.

Q. What were your duties on March 4, 1962?

A. I don't recall.

Q. On April 3, 1962?

A. I was off that day I believe.

[fol. 25] Q. April 2, 1962?

A. I don't recall. I am a utility officer.

Q. What does that mean?

A. I am assigned to different locations each day, or was at that time.

Q. How long did your assignment which you had on April 4, 1962 last?

A. From 10:00 A.M. to 6:00 o'clock P.M.

Q. Was the occasion of your assignment on April 4, 1962 the fact there had been a selective buying campaign introduced in Birmingham by some unidentified Negroes?

A. It was not.

Q. Isn't it a fact it was a part of your duties to survey that section and attempt to ascertain, if possible, who was behind the particular selective buying campaign?

A. I was in charge of the traffic movement in that particular area in which I was assigned at that time.

Q. You were aware of the fact there was a boycott or selective buying campaign going on at that time, were you not?

A. Not aware of the fact. I had heard that there was.

Mr. Walker: We object. This is getting pretty far afield about boycott and selective buying campaign, whether this Officer knew about it or not is immaterial.

Mr. Hall: If Your Honor please, part of our case is that the Officer arrested the Reverend Shuttlesworth and the Reverend Phifer as a part of a campaign of harassment rather than because of violation of a City ordinance, and we would like to show that if possible.

Mr. Walker: We suggest, Your Honor, counsel ask if the Officer knows whether or not the defendants were part of the boycott or not.

Mr. Hall: We have to establish it first, Mr. Walker. We are asking if he knows about it.

The Court: What is the question?

[fol. 26] Mr. Hall: We asked the Officer if he knew there was a selective buying campaign being waged by Negroes in

Birmingham on April 4, 1962. That is the date of the Defendants' arrest.

The Court: Let him answer.

A. Not to my knowledge.

Q. You had not been informed that there was such a campaign in effect?

A. By whom?

Q. By anyone.

A. By people on the street.

Q. You had been informed by the store owners themselves?

A. Not by the store owners.

Q. Had you seen any leaflets—mimeographed sheets and announcements to the effect that there was a selective buying campaign going on?

A. I had not.

Q. You had not been informed there was such a campaign going on by your superiors?

A. I had not.

Q. Officer Byars, I believe when you first observed these defendants you said you were north of the alley. That is 2nd or 3rd Alley?

A. The alley between 2nd Avenue and 3rd Avenue North.

Q. What alley would that be called?

A. I suppose it would be called 2nd Alley.

Q. You were north of that alley when you first observed these defendants?

A. Yes.

Q. That is about the middle of the block, would that be about correct, sir?

A. If the store was drawn to the alley.

Q. About right there? That is Newberry's. (Indicating) Now, you were on the north side of the alley when you first saw the defendants?

[fol. 27] A. That is true.

Q. What were they doing when you first saw them?

A. Walking south.

Q. Were they violating any ordinance at that time?

A. Not to my knowledge.

Q. Were they obstructing traffic at that time?

A. Not at that time.

Q. Now, what did you do when you saw them immediately after observing them?

A. Went into the store.

Q. You went into the alley entrance of the store and proceeded immediately to the front of the store?

A. Not immediately.

Q. How long did it take you, sir?

A. In my best judgment some forty-five seconds.

Q. That is pretty quick, isn't it?

A. Not to walk a half block.

Q. Forty-five seconds after you entered the alley entrance. Let's see, now, about how many feet would you say it is from the alley to 2nd Avenue?

A. Maybe 250 feet.

Q. And then in forty-five seconds you walked that 250 feet, is that correct?

A. It is my best judgment.

Q. And you went past customers on the inside of Newberry's and went straight through and it took you forty-five seconds, but you went directly to the front of the store?

A. From the alley to the front directly.

Q. Is there a door that faces the intersection from Newberry's department store which would give you a view of the intersection?

A. There is.

Q. What did you do? Did you stand there and observe the defendants or go immediately out to the intersection, or what?

A. I stood inside the store looking out on the street at the traffic.

[fol. 28] Q. How long did you stand there?

A. Some minute and a half.

Q. Now, it took you forty-five seconds to get up here. When you got to this door where were the defendants?

A. In front.

Q. In front where?

A. Where I have drawn the X.

Q. They were standing there?

A. That is true.

Q. When you first saw them were they walking rapidly?

A. Normal pace.

Q. So, when you got there they were already there?

A. That's right.

Q. And you stood there another minute or so watching them?

A. Yes.

Q. Although you had come directly from the alley to the front fairly rapidly?

A. Fairly slow, forty-five seconds.

Q. How many persons were standing there at that intersection when you first observed it?

A. Some ten or twelve.

Q. Were they all colored or white people, or altogether or what?

A. I didn't pay particular notice to the race.

Q. You stood there a minute or minute and a half and then you went out and cleared the intersection?

A. I went out and asked them to move.

Q. Was that great big crowd out there and the intersection completely blocked? You testified you had half of the south-north cross walk free, that the defendants were not blocking half of the south-north cross walk, they were standing in the west part of the cross walk where they should be standing assuming they were going south, they were not blocking the east-west cross walk at all? Now, where was the crowd that was blocking?

[fol. 29] A. They were all standing on the sidewalk.

Q. You mean the crowd?

A. That's right, including the defendant.

Q. Now, you placed the defendants where you have the X. Now, the crowd is what we are interested in now, the crowd they were blocking, where were they?

Mr. Walker: We object. There has been no testimony that there was a crowd that was being blocked; the testimony is there was a crowd blocking the moving traffic.

Q. Are these defendants charged then with assembling the crowd or something? Who were they blocking? Where were the persons they were blocking, these two defendants here?

A. They were blocking half of the sidewalk causing the people walking east to go into the street around them.

Q. The people walking east along what street?

A. Along 2nd Avenue.

Q. Along this way (indicating)?

A. That's right.

Q. The people walking along 2nd Avenue from west to east had to go around them?

A. That is true.

Q. While they stood there?

A. That is true.

Q. And you observed that for a minute or minute and a half?

A. That is true.

Q. And then you went out and you required them to move on. Did you speak directly to the Defendant Shuttlesworth?

A. I spoke to the people standing assembled there.

Q. They all moved but him, is that correct?

A. Not on the first request they didn't all move. Some began to move.

Q. Well, all had moved by the time you made the arrest?

A. Except Shuttlesworth.

Q. Nobody was standing there but Shuttlesworth?

[fol. 30] A. Nobody was standing; everybody else was in motion except the Defendant Shuttlesworth, who had never moved.

Q. Was he talking to you during this time?

A. He made a statement to me on two occasions when I informed him to move on on three occasions.

Q. Did he ask you where you wanted him to move?

A. No.

Q. Did you tell him where to move?

A. I did not.

Q. You didn't arrest anybody but Shuttlesworth?

A. Not at that time.

Q. You didn't know Shuttlesworth?

A. Not at that time.

Q. But you didn't arrest anybody but him?

A. That is true.

Q. Was there a police car on 2nd Avenue at this time?

A. No, there was not. That is a bus lane and buses were in movement at this time through that lane.

Q. What did you do after you arrested the Defendant Shuttlesworth?

A. Took him to the west side of 19th Street just north of 2nd Avenue.

Q. That is along this side? (Indicating)

A. Closer to the cross walk.

Q. What did you do then?

A. Waited until a patrol car came.

Q. Did you call a patrol car, or how did the patrol car get there?

A. Another officer on a motorcycle came up and called the patrol car.

Q. How many officers were on the intersection?

A. I have no knowledge of who was there. I don't make the assignments.

Q. You were in charge of traffic along that street, were you not?

[fol. 31] A. I was.

Q. What do you mean when you say in charge?

A. Of movement of traffic.

Q. But you had nothing to do with the other officers who were also there?

A. That's right.

Q. And you were not regularly placed at that area?

A. That is true.

Q. You were not at that time regularly assigned a traffic officer?

A. I was.

Q. You were temporarily as a utility man?

A. For that shift.

Q. For that particular shift? Do you have any idea or knowledge of who else was on that corner at that time?

A. I do not.

Q. No other police officer?

A. There were two officers across the street.

Q. Where across the street?

A. Diagonally across the street on the southeast corner.

Q. This corner here? Did they assist you in arresting the Defendant Reverend Shuttlesworth?

A. They did not.

Q. Did they help you to call the police car?

A. One of the officers called the patrol car, I believe.

Q. How many officers were present when you put him in the car?

A. I would say six or maybe seven.

Q. Six officers? Did he give you any trouble?

A. No trouble.

Q. Did he resist arrest?

A. No resistance.

Q. Officer Byars, this was on Wednesday morning, was it not?

A. I believe that's right.

Q. Is traffic pretty heavy on Wednesday morning on that street ordinarily?

[fol. 32] A. What type traffic?

Q. Foot traffic and pedestrian traffic.

A. I don't know what you consider heavy is. I am unable to answer the question.

Q. Well, in your best judgment tell us about how many people pass that corner going any way per given minute at about 10:30 in the morning.

A. It would vary.

Q. At that time on April 4th at about 10:30 in the morning in the year 1962 how many persons in your best judgment passed that corner per minute?

A. In all four directions?

Q. Any way, north, south, east and west.

A. Seventy-five to one hundred.

Q. Per minute?

A. Per minute. At this particular time.

Q. 10:30 in the morning.

A. At that particular minute I was there I would say seventy-five to one hundred.

Q. How long had you been there?

A. I had been at the next corner since 10:00 o'clock.

Q. But that was your first time coming to this particular intersection?

A. That's right.

Q. At that time in your best judgment the foot traffic, the pedestrian traffic, at 2nd Avenue and 19th Street in the City of Birmingham, Alabama, was seventy-five to one hundred persons per minute?

A. On all four corners.

Q. On all four corners?

A. Yes, sir.

Q. About seventy-five to one hundred per minute?

A. That is my estimate and judgment.

Q. What is your best judgment as to the traffic east and west?

A. Per minute?

[fol. 33] Q. Yes, sir.

A. About fifty people.

Q. About fifty people? Would you say it would be equally divided, twenty-five going east and twenty-five going west, or would you say more goes east or more goes west?

A. I have no way of knowing and have no idea.

Q. And you would say about the same north and south?

A. Again, I have no idea. They could go each way.

Q. By the same I mean the same number. You said fifty east and west and fifty north and south?

A. I would think so.

Q. When you first approached the Defendant Shuttlesworth and Defendant Phifer you came from inside Newberry's Department Store, did you not?

A. That is true.

Q. When you came to that corner did you address yourself to these defendants or to just the crowd?

A. I addressed myself to the people who were standing and not moving at that time.

Q. Did you address them from the front or from the rear?

A. From the front.

Q. You got in front of them?

A. Most of them I would say I was in front of them.

Q. Were they near the curbline on 2nd Avenue at the time you talked to them?

A. You mean the crowd or the defendants?

Q. The defendants.

A. They were between the store and the curbline.

Q. Now, would you say that was about—that was no longer than two minutes after you had seen them at the alley on 19th Street, assuming it took you forty-five minutes to get to the front of the store and a minute and a half while you observed them, you would say about two minutes or two and one-half minutes?

A. Didn't take forty-five minutes; it took forty-five seconds.

Q. I am sorry. Forty-five seconds from the time you first [fol. 34] saw them north of the alley and you went into Newberry's and proceeded to the front of the store and it took about forty-five seconds and you watched them for about a minute or minute and a half, and between the time they passed you there about the alley and the time you arrested the defendant on 2nd Avenue and 19th Street was about two minute, is that correct?

A. About four and one-half minute.

Q. How do you account for that time?

A. Because I spent a minute or minute and a half talking to them outside trying to encourage them to move.

Q. So, you would say it was about two minutes from the time you saw them crossing the alley on 19th Street until you first accosted the defendant, is that right?

A. About two or two and one-half minutes.

Q. Then you spent another minute talking to them and placing them under arrest?

A. In my best judgment

Q. Let's proceed from there, Officer Byars. You arrested the Defendant Shuttlesworth, you took him to 19th Street, the west side of 19th Street, and you called the patrol car; then the Defendant Phifer came up. Did he come up in an-

swer to a request from the Defendant Shuttlesworth, or did he voluntarily come up?

A. I don't know.

Q. Did you see Defendant Shuttlesworth ask him to do something or request something of him? You don't know what the conversation was?

A. All I know is Phifer of his own volition walked up and began to talk.

Q. Now, you arrested him at that time?

A. After I had asked him to move some three times.

Q. To move away from the Defendant Shuttlesworth?

A. Yes.

Q. This was where, now, on the west side of 19th Street?

A. Just north of 2nd Avenue.

[fol. 35] Q. Just north of 2nd Avenue, and this is where you had the Defendant Shuttlesworth waiting on the patrol car?

A. That is true.

Q. You were not standing in a cross walk at that point, were you?

A. No, not any of us at that particular time were in a cross walk.

Q. Defendant Phifer didn't block any sidewalk or anything then, did he?

A. Not then.

Q. Now, you didn't arrest the Defendant Phifer for blocking the sidewalk down on 2nd Avenue and 19th Street, did you?

A. I was occupied with Shuttlesworth and when I arrested him Phifer was with him, but at the time I was trying to pursue Shuttlesworth into the store Phifer disappeared.

Q. You wanted Shuttlesworth?

A. And I wanted Phifer.

Q. But you didn't arrest Phifer?

A. I couldn't arrest Phifer for chasing Shuttlesworth.

Q. Did he run?

A. He moved quickly into the store.

Q. You told him to move on?

A. After he was arrested is when he moved on.

Q. Did the Reverend Phifer run off anywhere?

A. He disappeared.

Q. But he came back of his own volition?

A. That is true.

Q. Did you then inform him he was under arrest? You told him to go ahead and let Fred alone, didn't you?

A. Yes.

Q. And only after he insisted on talking to Reverend Shuttlesworth did you arrest him?

A. That's right.

Q. What did you arrest him for—for talking to Reverend Shuttlesworth?

[fol. 36] Mr. Walker: We object. The complaint speaks for itself, what he was arrested for.

Mr. Hall: We would like to know what the officer arrested him for, not what the City says he was arrested for.

The Court: Let him answer.

A. For violation of Section 1436(F) and Section 1231.

Q. We understand that is what the written document says that is what you arrested him for, but what did you arrest him for on that date?

A. That is what.

Q. What did he do?

A. Interfering with an officer, refusing to obey the lawful command of an officer, obstructing sidewalk so as to interfere with free passage of pedestrians.

Q. Was he obstructing the sidewalk there while you had Defendant Shuttlesworth in your custody?

A. He was not.

Q. That is when you arrested him after you told him to go ahead and leave the Defendant alone?

A. Yes, that is when I arrested him for violation of Section 1231.

Q. That is the only time you arrested him?

A. I arrested him for two violations.

Q. Had you arrested him before that time?

A. I didn't. I couldn't find him.

Q. You had not arrested him before that time?

A. I could not find him.

Q. When he came up didn't you tell him to go ahead and let that man alone?

A. I didn't tell him to go ahead and let that man alone; I informed him he could not talk with the Defendant.

Q. And when he didn't move on you arrested him?

A. For violation of 1231, general code.

Q. But you didn't arrest him until that time, did you, Officer Byars?

[fol. 37] A. I couldn't find him.

Q. Did you look for him?

A. I didn't have time to look for him. I was checking Shuttlesworth.

Q. Didn't you have six officers there to help you?

A. Not at that time. There wasn't six there when the arrest was made.

Q. Did you arrest anybody else?

A. No.

Q. There was some other persons with the defendants when they were arrested?

A. That is what they told me.

Q. You were standing there looking at them, weren't you?

A. That's right.

Q. You didn't arrest any of them, did you?

A. They obeyed.

Q. You didn't arrest any, did you?

A. They moved on. I didn't arrest any.

Q. Now, as I understand it, you said you saw ten or twelve persons standing near the corner of 2nd Avenue and 19th Street at the time you arrested these defendants. How many people were in the group you first saw up there by the alley with the defendants?

A. Four to six people.

Q. Now, were they all walking together?

A. I would say so generally.

Q. What do you mean generally?

A. Walking up the street like you and five other people would walk up the street.

Q. How did you identify these folks—because they were all colored?

A. I didn't especially attempt to identify them, I had no reason to; I just noticed them walking.

Q. Were they loosely walking, walking four abreast, or two by two or one by one?

[fol. 38] A. I don't recall any particular events or series in which they were walking.

Q. How did you ascertain they were together in a group?

A. I didn't attempt to ascertain they were together; I just said four to six people walking down the street.

Q. Four to six people walking down the street and not necessarily together?

A. They were together, but I don't know whether they were—

The Court: Intentionally together?

A. That's right, yes, sir.

Q. When you got to the intersection and found these ten or twelve persons in the group—what do you mean by ten or twelve in a group?

A. That means like five and five are ten and two more is twelve.

Q. How did you ascertain they were altogether?

A. They were all standing and not moving.

Q. Was the light against them?

A. I am not aware of what the color of the light was at the time they were standing, but it changed some number of times while they were remaining in a stationary position.

Q. Are you certain of that?

A. I am quite certain.

Q. Were all these group colored people or some white and some colored?

A. I don't know what color they were.

Q. It is possible it just might have been the ten or twelve persons you were speaking of were probably other members of this pedestrian traffic moving along north, south, east and west?

A. They were standing and not moving.

Q. At some time, Officer Byars, isn't it true all pedestrians stand at intersections?

A. Necessarily to wait on the light to change.

Q. For various reasons?

A. For four and one-half minutes?

[fol. 39] Q. I don't know whether you stand there four and one-half minutes. As I understood you, it took some time to get to that corner. You have said it took—your whole operation took four and one-half minutes—they had to get from the alley too.

A. It was forty-five seconds.

Q. Maybe they can't walk that fast.

A. They were there when I got there.

Mr. Walker: We object to arguing with the witness.

Mr. Hall: This is cross examination, Your Honor, and the witness is arguing with me.

Q. Isn't it true, sir, all pedestrians stand at intersections sometime or another?

A. I don't know what other people do.

Q. You are a traffic officer.

A. They stand and wait on the lights.

Q. So, this ten or twelve people, you don't know whether they were acting in concert or whether these defendants were a part of them or what, do you?

A. Only what they told me.

Q. But you did race from the alley to the front of Newberry's and rush out there and arrest the Defendant Shuttlesworth and when Defendant Phifer sought to talk to him you put him under arrest?

A. Walked casually from the alley to the front, no particular expediency, and there watched the traffic outside.

Mr. Hall: If Your Honor please, we are through with this witness.

We would like to move, if possible, that the Reporter be asked to copy our diagram and include it in the record. We would like to introduce it if there is no objection.

Mr. Walker: No objection.

(Whereupon the blackboard diagram was received in evidence and marked "Defendant's Exhibit 1," a true and correct sketch of the same was made by the Reporter, and the Court Reporter hereby certifies that the reproduction of the same in this transcript is difficult or impracticable, [fol. 40] which fact is hereby certified to the Clerk of this Court.)

Redirect examination.

By Mr. Walker:

Q. I would like to ask one or two questions.

The X where you say marks the spot where the group was standing—

A. I believe that is where counsel asked me to designate Defendant Shuttlesworth's position.

Q. Was he alone or with some people?

A. There were some ten or twelve other people standing there with him.

Q. What was this group doing, if anything?

A. Just standing and talking.

Q. Who were they talking to?

A. Mostly to the Defendant Shuttlesworth.

Q. Was the Defendant Shuttlesworth doing any talking?

A. Quite a bit.

Q. Did any of the others talk to the Defendant Shuttlesworth?

A. They were all trying to.

Q. Now, you say, I believe, that you first saw the Defendant back here at the north end of Newberry's at the alley?

A. Yes, sir.

Q. And there were four or five people in the group with the Defendant at that time?

A. Yes, sir.

Q. And how many people was in this group that was talking in front of Newberry's?

A. In my judgment, ten or twelve.

Q. There were more than you had observed walking down 19th Street?

A. Yes, sir.

Q. Do you know where the additional people in that group came from?

A. No, sir. I was inside the store when they all gathered.

Q. Where did the people step off the curb at that you [fol. 41] testified about earlier?

A. On the west side of the telephone booth. It is the large spot drawn there.

Q. In other words, they stepped off onto 2nd Avenue?

A. Yes, sir.

Q. And when you say they stepped off the curb that means into the street as opposed to the sidewalk?

A. Into the street.

Mr. Walker: I believe that is all.

Mr. Hall: That is all.

(Witness excused.)

The Court: The hour being what it is, do you want to begin with a new witness or not?

Mr. Walker: We are willing to recess, Your Honor.

The Court: All right. 2:00 o'clock all right?

Mr. Walker: That is fine.

Mr. Hall: Yes, sir.

(Whereupon at 12:25 P.M. the court was in recess until 2:00 o'clock P.M.)

Officer James P. Renshaw, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, please.

A. James Paul Renshaw.

Q. What is your occupation?

A. Police patrolman, City of Birmingham.

Q. How long have you been so employed?

A. A little over thirteen years. Be fourteen years next month.

Q. Now, do you know the defendants in this case, Fred Shuttlesworth and James Phifer?

A. Yes, I do.

Q. Did you know the defendants when you saw them prior to April 4, 1962?

A. I knew Shuttlesworth. I didn't know the other defendant.

[fol. 42] Q. Now, on April 4th of this year did you have an occasion to see these defendants?

A. I did.

Q. About what time did you see the Defendant?

A. Approximately 10:30 in the morning.

Q. Where were you at that time?

A. I was going south on 19th Street from 3rd Avenue to 2nd Avenue.

Q. You were between 3rd and 2nd on 19th?

A. That is correct.

Q. Where were the defendants when you saw them?

A. They were over by Newberry's. That would be on the northwest corner of that intersection.

Q. If it helps any, I might turn this blackboard so you can see it. Can you see that to help you with your directions?

A. Yes, sir.

Q. Where did you say the defendants were?

A. On the northwest corner.

Q. Was anyone with the defendants or were they alone?

A. There were eight or ten or twelve.

Q. And what were the defendants and this group of people doing at that time?

A. They were looking at Officer Byars.

Q. Where was the Defendant James Phifer? Do you recall?

A. I don't recall at that particular time.

Q. Do you recall where the Defendant Fred Shuttlesworth was at that time?

A. I believe he was about in the middle of the crowd. I can't be positive on that.

Mr. Hall: If Your Honor please, we object to that answer and move it be stricken.

The Court: Well, whatever his best judgment about the location is might be sufficient.

Q. What did you do, if anything, when you saw Officer [fol. 43] Byars in this group of people?

A. I got off my motorcycle and went over to the scene.

Q. Was the crowd still there when you got there?

A. The crowd was still there when I got there.

Q. Tell the Court what, if anything, happened after you arrived at the scene?

A. I heard Officer Byars tell this group of men, "This is the third and last time I am telling you to move, you will have to clear the sidewalk," or words to that effect.

Q. About how big an area of the sidewalk did this group of men have covered? In other words, their bodies covered what portion of the sidewalk in your best judgment?

A. I would say about half.

Q. What happened, if anything, when Officer Byars told them this was the third and last time he was telling them to move on? What happened then?

A. The Defendant Shuttlesworth said, "We are just standing here on the sidewalk." And Officer Byars told him he was under arrest, and he said, "We will go in the store then." And he proceeded to go in the store and Officer Byars caught him and placed him under arrest.

Q. Did you see the Defendant Phifer at the time Reverend Shuttlesworth was placed under arrest?

A. Not to know him I didn't.

Q. Did you ever see him again?

A. I saw him a minute or so later.

Q. What were the circumstances that you saw the Defendant Phifer a minute or so later?

A. We had taken the Defendant Shuttlesworth over to a motorcycle over close to the motorcycle by a mail box located there at the corner, and the Defendant Phifer came

up and started talking to Shuttlesworth. At that time Officer Byars told him he would have to leave, he couldn't talk to a prisoner.

Q. What happened then?

A. He said, "I am going to talk to him."

[fol. 44] Q. Was there any more conversation after that?

A. I don't recall if Officer Byars told him another time he would have to leave, that he was not allowed to talk to a prisoner, or not, and Defendant Phifer said he would just go with him, and he was placed under arrest.

Q. Was the Defendant Phifer placed under arrest at that time?

A. Yes, sir.

Q. Let me ask you this: When you first saw this group of people they were standing just outside of Newberry's at the corner where Newberry's is located?

A. They were standing at the curb on the 2nd Avenue side at the cross walk that crosses over 2nd Avenue to Pizitz.

Mr. Walker: I believe that is all.

Cross examination.

By Mr. Hall:

Q. Officer Renshaw, are you a traffic policeman?

A. That is correct.

Q. Still in traffic?

A. Still in traffic.

Q. On this morning where were you patrolling, the morning of April 4, 1962?

A. I was patrolling 19th Street. I work 18th and 19th Street.

Q. Patrolling 19th Street? What was your job?

A. All traffic enforcement.

Q. Was there a heavy concentration of policemen on these streets on April 4, 1962?

A. To my knowledge there was not.

Q. Officer Byars was there on 19th Street I understand?

A. He works the corner. I work a motorcycle.

Q. What did Officer Byars work on that day?

A. He worked an intersection.

Q. Which intersection?

A. I don't know which corner he was working on on that day.

Q. But there wasn't any particular heavy concentration of policemen down there at that time, was there?

[fol. 45] A. There was no concentration of policemen.

Q. More so than usual?

A. Some might have been passing.

Q. What time do you change your shifts?

A. We don't have a shift. We go on at 10:00. We are kind of a split shift.

Q. Go on at 10:00 o'clock in the morning?

A. 10:00 o'clock in the morning.

Q. At that time you would be going through your various assignments and you were just coming on duty?

A. We had just come on about thirty minutes before.

Q. That was about 10:30?

A. That is correct.

Q. How many policemen did you see at or about the corner of 2nd Avenue and 19th Street on the morning of April 4, 1962, at about 10:30?

A. Now, the only one I saw at this particular time—of course, in just a minute more came over, but when I first arrived the only one I saw was Officer Byars.

Q. In a minute you say more came over?

A. That's right.

Q. Could you ascertain where they came from?

A. I couldn't tell. I didn't see them until they arrived there.

Q. Officer, were you aware on that date, that is, April 4, 1962 that the Negroes of the City of Birmingham were engaged in a selective buying campaign with reference to the stores downtown?

A. I had heard of it.

Q. Do you know if the Police Department officially knew of this selective buying campaign at that time?

A. I can't say about officially, if they officially knew of it.

Q. Had you gotten any official word of this selective buying campaign at that time?

A. Do you mean any official orders?

Q. Any instructions from your superiors or your depart-
[fol. 46] ment about the buying campaign?

A. None that I recall.

Q. You had not been instructed to patrol the streets very carefully and attempt to ascertain who, if anyone, was carrying on this campaign?

A. We had not been told of it.

Q. You had not been instructed to keep out particular watch for certain persons who might appear in town?

A. We had not been told to watch for anyone.

Q. The Police Department didn't have special officers in ordinary clothes stationed in Newberry's and Loveman's Department Store and Pizitz Department Store?

A. That is possible. I didn't go in the stores. I don't know.

Q. Did you see any special officers?

A. I did not see any special officers.

Q. You do not know of any such officers who were stationed there for the particular reason that they were trying to police upon this selective buying campaign?

A. Not to my knowledge.

Q. Have you seen any mimeographed leaflets circulated about town with reference to the selective buying campaign urging Negroes to be careful where they shopped during the Easter season?

A. I had seen them.

Q. Had you seen them on April 4, 1962?

A. Whether before or after I don't recall.

Q. But this particular incident occurred right at the time when the selective buying campaign was going on, did it not?

A. It was about that time.

Q. Now, Officer, you are a veteran policeman. I will ask you how long you have known the Defendant Shuttlesworth?

A. I believe the first time I saw him was up at the terminal station when we had a little trouble up there two or three years ago.

Q. What sort of trouble was that?

[fol. 47] A. He was sitting in the white waiting room up there.

Q. In the waiting room reserved for white people?

A. That's right.

Q. Did you arrest him on that occasion?

A. I did not.

Q. Was he arrested on that occasion?

A. Not while I was there.

Q. Had you seen him after that and before April 4, 1962?

A. I don't recall right offhand whether I did or not.

Q. I will ask you, Officer, if you were on duty at any time during the so-called freedom rights at the Trailway Bus Station or Greyhound Bus Station?

A. I was.

Q. Were you present at the Greyhound Bus Station on the occasion when Fred Shuttlesworth was arrested there?

A. That's right, I sure was.

Q. Did you testify against him at his trial?

A. I don't remember.

Q. But you were one of the officers present?

A. I was present. In fact, I am sure I didn't arrest him.

Q. You do know he was arrested at Greyhound Bus Station on that occasion?

A. I believe he was.

Q. And charged with failure to obey the lawful commands of Police Chief Jamie Moore, you know that, do you not?

A. Yes.

Q. And you know he was subsequently tried on that charge?

A. Yes.

Q. And numerous members of the Birmingham Police Department testified against him, did they not?

A. Yes.

Q. And you knew that on April 4, 1962, didn't you?

A. Yes, I knew it.

Q. Officer Renshaw, I will ask you if you did not know that [fol. 48] the Defendant Shuttlesworth and Phifer were arrested as the result of an experience on the Birmingham Transit buses sometime early in 1962?

Mr. Walker: We object. He couldn't know why the defendants were arrested.

The Court: Well, if it goes to the length of recognition or knowledge of them, I guess it is all right.

A. I recall, but at that time I don't know whether I recognized him as being Shuttlesworth or not. I know there was a busload, but whether or not I ever saw him I don't recall.

Q. I will ask you this, Officer Renshaw: You were aware of the fact that Reverend Shuttlesworth and the Reverend Phifer were arrested early in 1962 when it was alleged that their time for appeal had expired and that they were incarcerated in the Birmingham City Jail for more than a period of one month and were subsequently released as a result of an appeal to the United States Supreme Court—were you aware of that fact?

A. I was.

Q. You knew that on April 4, 1962?

A. I did.

Q. As a matter of fact, these defendants were and are fairly notorious persons in the field of civil rights in the City of Birmingham, are they not?

A. Yes.

Q. They have been for some time, have they not?

A. That's right.

Q. They have been arrested on numerous occasions in and about their efforts in the field of civil rights?

A. That's right.

Q. Their faces have appeared on numerous television shows and in the newspapers on many occasions, is that right?

A. That is correct.

Q. They are generally known to the Birmingham Police Department?

A. To the ones who have seen them I would say they are.

[fol. 49] Q. They were so generally known on April 4, 1962, is that right?

A. To me they were.

Q. Now, Officer Renshaw, where did you say you were when you first observed these two defendants here on the morning in question?

A. I was going south on 19th Street.

Q. Will you indicate that on the board here that we have drawn, please, sir?

A. I was going south in this direction to about this point. (Indicating)

Q. About there? Now, where did you observe these defendants when you reached this point?

A. They were along in this position here. (Indicating)

Q. Would you tell us your best judgment how many feet you were from 2nd Avenue?

A. I was in the curb lane, which is the right lane, and I would say I was ten or twelve feet from the curb and when I first observed them I would say I was roughly twenty or thirty feet north of 2nd Avenue.

Q. Twenty or thirty feet north of 2nd Avenue?

A. Yes.

Q. You didn't see them prior to that time?

A. No.

Q. You didn't see them proceed down 19th Street?

A. No.

Q. Had you seen Officer Byars prior to that time?

A. No, I had not.

Q. When did you first see Officer Byars?

A. When he was talking to them.

Q. When you approached this corner and arrived at the point you have indicated on the board here Officer Byars was then on the curb talking to the defendants?

A. That is true.

Q. What did you do when you saw Officer Byars standing over there talking to them?

A. I got off my motorcycle and walked over there.

[fol. 50] Q. You walked over to the crowd?

A. Yes.

Q. Did you join Officer Byars?

A. Not in the conversation.

Q. But he knew you were there?

A. Whether or not he did—when I got off the motor he had his back to me.

Q. Did you go to him and inquire as to whether or not he was having difficulty, or what did you do?

A. Well, he was talking and I didn't interrupt his conversation.

Q. You just stood there?

A. I just stood there.

Q. And listened to what he said?

A. Yes.

Q. And listened to what the defendant said?

A. Yes.

Q. Did you recognize the defendants when you looked at them?

A. Which one?

Q. Both of these defendants.

A. I recognized one of them.

Q. Which one did you recognize?

A. Shuttlesworth.

Q. Did you assist Officer Byars in arresting the Defendant Shuttlesworth?

A. That is true, I did.

Q. You did assist him?

A. That's right.

Q. How did you assist him?

A. Just by my presence. I would say that. As far as using force, it wasn't necessary.

Q. I am a little curious, Officer; did Officer Byars ever turn around and note your presence?

A. I don't believe he knew I was there until I got up to him.

Q. So, when he testified here, or if he did, that no other officer was present, he was probably correct, is that correct?

[fol. 51] A. That is correct.

Q. As a matter of fact, he didn't know you were there himself?

A. Not unless he heard my motor coming up he didn't.

Q. But if he said there was no other officer there, he is not in error because he didn't see you?

A. Not until the last he didn't see me.

Q. You had nothing at all to say to the defendants?

A. No, I did not.

Q. How many times did you hear Officer Byars repeat that they were to move on?

A. I just heard him that one time.

Q. What did he say?

A. First I heard him in a loud voice, but I couldn't distinguish what he said, but then he said, "For the third and last time I am telling you you got to clear the sidewalk, that you got to move on," or words to that effect.

Q. To whom was he addressing his remarks?

A. To the crowd.

Q. The entire crowd?

A. Yes.

Q. Was the crowd just standing there and looking at him?

A. Just standing there and looking at him.

Q. What did they do after that third statement?

A. Shuttlesworth said, "We will just go in the store."

Q. "We will just go in the store"?

A. Yes.

Q. Tell me about this crowd, how many people were in that crowd?

A. I believe I said eight or ten or twelve.

Q. Were they all colored or any white folks or Chinese or Japs?

A. In this one crowd they were all colored.

Q. No white folks there at that corner at all?

A. There were people on the corner and people crossing the street.

Q. Were there any standing up there?

[fol. 52] A. Clarify that a little.

Q. I am trying to find out when you refer to crowd to whom are you referring?

A. I am referring to a bunch of men that were standing at one location.

Q. Which location?

A. In the location I pointed out this group of men were standing in.

Q. Would you mind pointing it out again? You pointed out where the two defendants were standing.

A. Now, the whole group was here. (Indicating.) I see you have the crosswalk drawn across. The whole group had the crosswalk approximately half blocked.

Q. You say whole group, you mean all the colored folks present?

A. They were standing and listening to Officer Byars.

Q. And you had all the colored folks grouped in one group?

A. I did not. I said all in this one group you are speaking of.

Q. What held them together and distinguished them for you?

A. They were just close and each one watching Officer Byars.

Q. Weren't other folks watching him too?

A. If they were they were somewhere else, but they were not immediately in front of him.

Q. Officer Byars was not immediately in front of them?

A. Or vice versa.

Q. Where was Officer Byars standing, was he standing immediately in front of any particular individual?

A. In front of this group you were talking about. He was standing in front of them.

Q. With reference to these two defendants where was he standing?

A. He was standing north of the two defendants and maybe a little northeast.

Q. Was he directly in front of either of these defendants?

A. I couldn't say for sure if he was directly in front of either one of the two defendants.

[fol. 53] Q. You don't know now—the crowd standing right there and you moved from twenty-five feet here to what portion of that crowd—where were you, outside the crowd, in front of it, or where?

A. In front of it.

Q. On this side?

A. I was just a little east of Officer Byars.

Q. Over this way?

A. Yes.

Q. You were out in the crosswalk over here?

A. Yes.

Q. And Officer Byars was at the front of you and to the west you say?

A. That's right.

Q. He was in front of you?

A. Yes.

Q. And you were behind him?

A. Yes.

Q. How close were you to Officer Byars?

A. When I first walked up or at what time?

Q. When you first walked up. How long did this arrest take?

A. Just a few seconds, I would say.

Q. How many seconds?

A. Within thirty seconds from the time I got there.

Q. How close were you to Officer Byars during any one of those thirty seconds?

A. I would say I was within two or three feet of them.

Q. How close were you to Defendant Shuttlesworth during that time?

A. Just add two or three feet to that. Five or six feet.

Q. Were there any persons between you and the Defendant Shuttlesworth?

A. I would say none other than Officer Byars.

Q. But he was in bold relief—you could see him?

A. I could see him to recognize him.

[fol. 54] Q. There were no persons between you—there were a crowd of people there all right, but there was no persons between you and Shuttlesworth?

A. I am talking about the crowd in particular. I don't recall if he was in the center of the crowd or on the edge, but I kind of believe he was in the center.

Q. You could see him distinctly?

A. I said a hazy recollection, but I believe he was in the center of the crowd and I would be about five feet from him in that case.

Q. This is what I am trying to get at, Officer Renshaw: You testified as to what this defendant said and what Officer Byars said and there seemed to be no difficulty about that, but what I was trying to see is how close you were to him or if there was someone between you and if somebody else might have said it.

A. No, because I recall looking right at him when he said it.

Q. And you also know what Officer Byars said?

A. Yes, that's right. I heard the last statement.

Q. When did Defendant Shuttlesworth decide to go in the store?

A. When did he decide to go in the store?

Q. Yes. Were you there when he went in?

A. I was there when he started in after Officer Byars told him he was under arrest.

Q. And you distinctly heard that of course, but how far in did he get into the store?

A. I would say almost to the door.

Q. Was he walking fast or running?

A. Just walked off with the rest of the crowd.

Q. With the rest of what?

A. The group.

Q. All of them walked off into the store?

A. Yes.

Q. Had any of that group you are testifying about walked away prior to this time?

A. It is possible some could have walked away. The short [fol. 55] time I was there I don't recall.

Q. Do you recall the Defendant Phifer walking away?

A. I don't recall. I didn't know him when I see him.

Q. Do you recall any of those colored folks walking away?

A. I don't recall it. Like I say, it is possible they could have.

Q. When the group went into Newberry's or turned to go into Newberry's, was the entire group arrested?

A. Just one.

Q. The Defendant Shuttlesworth?

A. That's right.

Q. Defendant Phifer was not arrested at that time, was he?

A. He was not.

Q. Were you present when he was arrested?

A. I was.

Q. Where did that take place?

A. Would you like me to draw it?

Q. Yes, sir.

A. It was about in this location here. (Indicating)

Q. About how many feet would you say that is from the south curb of 19th Street—rather, the north curb of 19th Street and 2nd Avenue?

A. The north curb of 2nd Avenue I would say would be twelve to fifteen feet.

Q. So, the Defendant Shuttlesworth was taken to a point about twelve or fifteen feet from the north curb of 2nd Avenue on 19th Street, is that right?

A. That's right.

Q. And he was made to stay there and stand there while the officer called the police?

A. That's right.

Q. Were you still present during this time?

A. I was.

Q. Did you have your motorcycle or vehicle with you?

[fol. 56] A. I did.

Q. Does it have a two-way radio?

A. Yes, it did.

Q. Did you call the patrol car?

A. I believe one of the other officers called the patrol car maybe on my radio.

Q. Which other officer was this?

A. One of the other officers that was there.

Q. How many officers were there in these thirty seconds you are talking about?

A. Now, we have gotten a little—when we were standing over here and you said we called the police on the two-way radio, there were four or five officers there at that time.

Q. Was it more than thirty seconds? How long had this whole operation taken?

A. The whole operation I would say took ten or fifteen minutes.

Q. Had it taken that long?

A. Yes, that's right.

Q. And there were four or five other officers present and they used your two-way radio?

A. I would imagine that they used mine.

Q. And you were standing there with Officer Byars near Defendant Shuttlesworth?

A. That's right.

Q. When the Defendant Phifer came up to talk with him?

A. That is correct.

Q. Do you recall the circumstances of his coming up to talk? Do you know whether it was the result of being called?

A. You mean if Shuttlesworth called Phifer over or not?

Q. Yes.

A. I don't know.

Q. You didn't hear that? How close were you to them at this point?

A. I could have been within six feet.

[fol. 57] Q. Now, did you say anything to either one of these defendants at that point?

A. No, I didn't.

Q. What did Officer Byars say to the Defendant Phifer there?

A. He told him this man was under arrest and he would not be allowed to talk to him and to move on.

Q. He said point blank that he would not be allowed to talk to him, is that right?

A. He said, "You cannot talk to the prisoner," or words to that effect.

Q. Said he was under arrest in violation of a city ordinance and he could not talk to him?

A. That's right.

Q. And he told him to move on?

A. That's right.

Q. Did Defendant Phifer move on?

A. He said, "I will go with him."

Q. Did he move?

A. He did not.

Q. What did Officer Byars say then?

A. He said, "You are under arrest too."

Q. What did he tell him he was under arrest for?

A. Refusing to obey the lawful command of an officer.

Q. How many policemen were standing there with you at that time?

A. At that time I would say there were four or five.

Q. At least four or five?

A. Yes.

Q. And there were just these two defendants?

A. That's right.

Q. The arrest of the first defendant, F. L. Shuttlesworth, had been for failure to clear the street?

A. That's right.

Q. Had he been searched?

A. I don't believe he had at that time, or up until that time I would say.

[fol. 58] Q. Was he a docile prisoner?

A. He was.

Q. Did he give you any difficulty at all?

A. No.

Q. Did the Reverend Phifer, the second defendant, offer any physical exertions on behalf of the first prisoner?

A. None.

Q. Did he resist arrest himself?

A. He did not.

Q. Did he make any threats or any attempt to relieve the first prisoner or himself?

A. He did not.

Q. Are these the only two persons in that crowd who were arrested?

A. Yes.

Q. What happened to the crowd after they were arrested?

A. They disbursed and the four or five officers that were there kept moving people up and down the street and not letting them block the street.

Q. After the arrest the crowd got bigger?

A. It did.

Q. As a matter of fact, the arrest itself obstructed traffic for some time, did it not?

A. Like I said, when we went over to wait for the wagon or car there was a mail box there and a light pole; we were by the mail box and the light pole and of course naturally you would obstruct anyone that walked through there.

Q. Officer Renshaw, how long had you been on this traffic beat before April 4, 1962—how many weeks or months?

A. You mean working 19th Street and 18th Street?

Q. Yes.

A. I would say two and one-half or three years.

Q. Are you familiar with the flow of traffic at 2nd Avenue and 19th Street?

A. I am.

[fol. 59] Q. Do you know the opening times of the various stores located along 19th Street at 2nd Avenue?

A. Normally I know the bigger stores.

Q. The Newberry's Store opens at what time?

A. I believe Newberry's opens about 9:30. Most of them open at 10:00.

Q. Now, on the southwest corner is Pizitz Department Store, is that correct?

A. That is correct.

Q. That is the southwest corner of 19th Street and 2nd Avenue intersection?

A. That is correct.

Q. And they are open about what time?

A. They open about 10:00.

Q. Are there other department stores along 19th Street at about that intersection?

A. There is department stores. You got your Green—no, that is 2nd Avenue. You mean how close to the intersection?

Q. Well, let's rephrase that. There are other stores selling merchandise, various stores, that is correct, isn't it?

A. That is correct.

Q. And what is the general time that they open in April ordinarily?

A. I would say anywhere from 9:00 to 10:00.

Q. The larger stores open at 10:00, is that correct?

A. Yes.

Q. And the banks open at what time?

A. 9:00.

Q. 9:00 or 9:30?

A. Yes, sir.

Q. And there were no banks on 19th Street at that time?

A. None at that time.

Q. Only the stores, the department stores and merchandise stores, is that correct?

A. That is correct.

[fol. 60] Q. And this did occur on Wednesday, did it not?

A. I don't recall what day of the week it was.

Q. Assuming it was Wednesday for the purpose of this question at about 10:30 in the morning during the first week of April in any year, particularly this year, what in your best judgment would be the flow per minute of pedestrians north or south, east or west at that intersection?

A. I couldn't answer that—you mean normal flow of traffic walking north or walking south or walking east or walking west?

Q. Yes, per minute at about 10:30 on Wednesday morning in the first week of April under normal conditions.

A. I have never given it any thought. I would say it would be at least one hundred per minute walking in any direction. That might be a little high.

Q. Does it increase or decrease as the time goes on? That is, when is the busiest time at that intersection?

A. Around noon.

Q. What in your opinion would you say the flow per minute was?

A. It would increase I would say fifty per minute.

Q. It wouldn't increase by fifty per minute from the very beginning of the early morning shopping time to high noon

when employees and other persons moving about to get their lunch and come back in the store to go about their various chores?

A. About fifty per minute.

Q. And that is your best judgment?

A. That is my best judgment.

Mr. Hall: Thank you. That is all.

Redirect examination.

By Mr. Walker:

Q. Officer Renshaw, let me ask you one or two questions. When you first saw this group were you able, or did you know whether or not the Defendant Phifer was in it?

A. I do not.

Q. Did you ascertain at any time after coming up on the corner whether the Defendant Phifer was in this group?

[fol. 61] A. I don't know the defendant and didn't know him until the last instance where he was placed under arrest.

Q. One other thing. I would like to clear up on this diagram this part next to the curb on the northwest corner, that is, the line you drew indicating where the group was standing when you first saw Officer Byars talking to them.

A. That is correct.

Mr. Walker: That is all.

Mr. Hall: We have no further questions.

(Witness excused.)

Officer C. W. HALLMAN, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, please.

A. Officer C. W. Hallman, City of Birmingham.

Q. And you are a policeman?

A. Traffic policeman.

Q. How long have you been a police officer?

A. Be twelve years next April.

Q. How long have you worked the traffic detail?

A. Four years.

Q. On April 4th this year were you working traffic?

A. Yes.

Q. Where were you working on April 4th?

A. 2nd Avenue and 19th Street North.

Q. On that occasion did you see either of these defendants at about 10:30 in the morning on April 4th?

A. Yes, sir.

Q. Where did you first see either or both of the defendants?

A. On the northwest corner of 2nd Avenue and 19th Street.

Q. What were they doing at the time you saw them?

A. At the time I first saw them they were standing—these two defendants were standing with about five or six more [fol. 62] with them in kind of a group and Officer Byars was talking to them.

Q. Did you see both defendants in the group?

A. Yes, sir.

Q. What did you do then, if anything?

A. At that time I didn't do anything. I was getting some information from another officer on the southeast corner of the intersection.

Q. Was that in relation to this case?

A. No, sir. It was to call my home.

Q. What did you see happen on the northwest corner, if anything, on that occasion?

A. I noticed Officer Byars talking to the group and directly he motioned for me and Officer Davis to come over there where he was at, and we went over there and just as I stepped up on the curb I heard him tell this group, "I am telling you for the third time you will have to move on, you are blocking the crosswalk."

Q. About how many was in the group at that time, if you know?

A. I would say five or six. It could have been more or less.

Q. What happened to the group then, if anything?

A. All of them disbursed except Shuttlesworth.

Q. What happened after that?

A. Officer Byars told him he was under arrest for blocking the sidewalk and placed him under arrest.

Q. Where were you standing at the time you were hearing this conversation?

A. I was standing on the same corner they were, the northwest corner.

Q. What happened after the others had left and he told Reverend Shuttlesworth he would have to move on or he would arrest him? What happened then?

A. All of them moved except him and he placed him under arrest and carried him over to the edge of the curb to wait for the police car to come pick him up.

Q. Was the Defendant Phifer there at that time?

[fol. 63] A. He was there and moved on, but he came back.

Q. Did you see him when he came back?

A. Yes, sir. I would say I was standing on the north side of where Shuttlesworth was standing.

Q. What happened when the Defendant Phifer came back?

A. He came up and said he wanted to talk to Shuttlesworth and Officer Byars told him he couldn't, that he was under arrest, and he said, "Well, I want to talk to him anyway." And he said, "Well, if you do, I will have to arrest you too because I have told you to leave." And he said, "Well, I will have to be arrested." And he placed him under arrest for failing to obey an officer.

Mr. Walker: I believe that is all.

Cross examination.

By Mr. Hall:

Q. How do you spell your name, H-a-l-l-m-a-n?

A. That's right.

Q. Mr. Hallman, will you come up to this diagram and show us where you were standing, assuming this is 19th running from top to bottom, and 2nd Avenue from side

to side, this is the intersection here, this is Newberry's, this is Pizitz, that is the southeast corner and that is the northeast corner of the intersection. (Indicating.)

A. You want me to show you where I was standing when I first saw them?

Q. Yes.

A. I was standing right here. (Indicating.)

Q. Will you just print your name right there, please, sir?

A. (Indicating.)

Q. How long had you been standing there, Officer Hallman?

A. I had been there approximately an hour. I had been working traffic on that side of the street.

Q. You had been working this intersection for approximately an hour?

A. Yes.

[fol. 64] Q. When you first observed this business over here between Officer Byars and these defendants?

A. That's right.

Q. How many policemen ordinarily work that intersection, Officer Hallman?

A. Just one.

Q. But you had some help this morning?

A. No.

Q. How many policemen were on that corner at that time?

A. Well, at that time there were three of us. There was myself, Officer Davis was giving me information to call my home, and Officer Byars was standing on the other corner.

Q. Wasn't there another officer there?

A. I didn't see him at that time. I didn't notice him.

Q. Did you ever see him—Officer Renshaw?

A. Yes, I saw him.

Q. When did you see him?

A. Before the two defendants were placed under arrest.

Q. You didn't see him at the time the Officer Byars was giving his third command to Shuttlesworth and Phifer?

A. No, I was looking at Officer Byars. Only one time I heard him.

Q. You heard him say that just once?

A. Yes.

Q. He only said it once, is that right?

A. I couldn't verify that. I was across the street and I heard him say it once.

Q. From the other side of the street?

A. No. The side he was on.

Q. You were standing there near him when he said it?

A. When he said, "This is the third and last time I am telling you you have to move on."

Q. You didn't see Officer Renshaw standing there at that time?

A. I told you I didn't.

Q. But there were at least four officers on that intersection [fol. 65] at that time, is that correct?

A. Three.

Q. How long did it take to arrest these two defendants on that occasion?

A. I would say the whole procedure took approximately six or seven minutes counting the time they were arrested and the time for the car to get there and take them away.

Q. After they were arrested the car came and picked them up and took them away and didn't take over six or seven minutes?

A. Eight at the most.

Q. Now, you observe on these corners from your position here when you police that corner, do you not?

A. I try to.

Q. Had you seen these people over there blocking traffic before you saw Officer Byars?

A. I saw him standing over there talking to them.

Q. Did you see them before he was talking to them?

A. I saw them over there. I didn't pay any particular attention to them.

Q. Did you get the impression they were waiting for the light to change?

A. I couldn't answer that because I don't know what they had on their mind.

Q. You formed no impression when you first saw them?

A. No.

Q. You took no note of them when you first saw them, is that right?

A. Just saw them standing over there.

Q. The only time you made note of them standing over there was when you saw the policeman assisting you talking to them?

A. When I saw him over there talking to them. He wasn't assisting me.

Q. He wasn't assisting you with your corner.

A. No.

[fol. 66] Q. Officer Hallman, were you aware on that date that there was a selective buying campaign going on initiated by Negroes in the City of Birmingham against downtown stores?

A. I have no proof of such going on.

Q. Were you aware of it?

A. It had been rumored.

Q. You had some knowledge of it?

A. Rumors.

Q. Had you been told by your superior officers that such a thing was going on?

A. No.

Q. Had you seen any mimeographed copies of leaflets announcing there was a selective buying campaign going on?

A. Never had seen such.

Q. And advising Negroes to remain from the downtown area?

A. No.

Q. Isn't that the reason you had so many policemen on that corner?

A. No.

Q. Isn't it true the only reason Fred Shuttlesworth was arrested that day was because he was downtown and the police thought he might have been encouraging the selective buying campaign?

A. He was arrested for the charges placed against him and that is all.

Q. Did the Defendant Phifer request permission of the officer who had arrested the Defendant Shuttlesworth to speak to him?

A. He said he wanted to.

Q. He asked the officer?

A. That's right.

Q. And the officer said he couldn't?

A. The officer said he couldn't.

Q. He didn't walk up to the Reverend Shuttlesworth and start talking to him without asking the officer, did he?

A. He came up and said something to him and Officer Byars told him he couldn't talk to him, he was under arrest, and then he said, "I would like to talk to him." And he said, [fol. 67] "You can't, he is under arrest."

Q. Did he tell the Defendant Phifer to move on?

A. He told him to move. He said he wanted to talk to him anyway and he said, "I will have to place you in jail too."

Q. And that is when he arrested the Defendant Phifer?

A. That's right.

Q. He didn't arrest him on that corner?

A. He arrested him on that corner.

Q. I beg your pardon. I don't quite understand you. I said he didn't arrest him on the corner when he arrested Defendant Shuttlesworth?

A. He was arrested on the northwest corner of 2nd Avenue and 19th Street after he arrested Shuttlesworth.

Q. Will you show me where you were when he was arrested, please? I don't quite understand.

A. When Shuttlesworth was placed under arrest I was standing right here behind Officer Byars. When Phifer was placed under arrest Shuttlesworth was standing here and I was standing here and Byars was standing right here behind Shuttlesworth. (Indicating.)

Q. Now, how far in your best judgment was Officer Byars from the north curb of 2nd Avenue after he arrested Shuttlesworth?

A. About a car length.

Q. In your best judgment how far is that in feet?

A. About ten feet or twelve or something like that.

Q. That was ten or twelve feet from the point where he had arrested Reverend Shuttlesworth, is that correct?

A. I didn't say that. It was that far from the north curb line.

Q. In your best judgment how far was it from the point he arrested the Reverend Shuttlesworth?

A. I would say it would run across the corner this way would be about another eight or ten feet.

Q. So, it was eight or ten feet away and it was about five to ten minutes away in point of time, is that right?

A. I would say it would be about three or four minutes [fol. 68] from the time Shuttlesworth was arrested until Phifer was arrested.

Q. And he was arrested for wanting to talk to Reverend Shuttlesworth?

A. He was arrested for failing to move on when an officer told him to.

Q. But it was only after he attempted to talk to Reverend Shuttlesworth?

A. That's right.

Q. And the officer said he couldn't and told him to move on?

A. Yes.

Q. And then he was arrested?

A. That's right.

Q. But he was not arrested at the outset when Shuttlesworth was arrested for blocking that sidewalk?

A. No. He moved when he was told to because the sidewalk was being blocked.

Mr. Hall: Thank you very kindly.

The Court: Anything further?

Mr. Walker: No further questions.

(Witness excused.)

Mr. JOHN D. ALLRED, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. What is your full name?
A. John D. Allred.
Q. How do you spell it?
A. Allred.
Q. Officer Allred, your occupation is a policeman?
A. Yes, sir.
Q. How long have you been so employed?
A. Four years this past August.
Q. What are your assignments, traffic or—
A. Well, no, sir. I am in the patrol division.
Q. On April 4th of this year where were you working?
[fol. 69] A. I was working traffic downtown.
Q. Traffic was your assignment then?
A. Yes.
Q. On that occasion did you see either of the defendants or both of them?
A. Yes, sir, I did.
Q. About what time?
A. Approximately 10:30.
Q. Where were the defendants when you first saw them?
A. When I first saw the defendants they were talking to Officer Byars.
Q. Where were you at that time?
A. I would say I was approximately twenty-five or thirty feet south of the alley by Newberry's.
Q. And what did you do then, if anything?
A. Well, I was giving some directions to some people at this time and I heard Officer Byars make a statement to a group they were going to have to move on.
Q. How far were you from the group or from Officer Byars when you overheard that statement?
A. Approximately from here to the back of the court room.

Q. What happened then, if anything?

A. Well, as I say, I was giving directions and I saw Shuttlesworth and this other one walk off and then I saw Officer Byars go get them, and the next time I saw him he was leading one of them back to the curb.

Q. Were you present when the Defendant Phifer was placed under arrest?

A. Yes, sir.

Q. When was the Defendant Phifer placed under arrest?

A. He had Shuttlesworth standing at the curb and he came up and said he wanted to talk to him and Officer Byars told him he couldn't talk to him, he was under arrest.

Q. Did you ever come from where you were first standing [fol. 70] when you first saw the incident?

A. Yes, sir, I came on up there.

Q. You were present then when Phifer was placed under arrest?

A. Yes.

Q. What did Reverend Phifer say to Officer Byars and to Shuttlesworth and what did Office Byars say to Phifer?

A. Well, now, I don't know what he said to Shuttlesworth, but Officer Byars told him he couldn't speak to Shuttlesworth because he was under arrest, and to the best of my knowledge he kept on insisting and Officer Byars told him he would have to go with him, and he told him he wanted to with him, or something to that effect.

Mr. Walker: That is all.

Cross examination.

By Mr. Hall:

Q. Officer Allred, how long have you been with the police department, please, sir?

A. Four years this past August.

Q. Have you been in traffic all that time?

A. All but approximately a year.

Q. About a year in traffic?

A. All but a year.

Q. And you were in the traffic department on April 4th this year?

A. I was.

Q. Where were you stationed at that time?

A. I was working on the corner of 3rd Avenue and 20th Street at that time. That was my regular assignment.

Q. What was the occasion for you being on 2nd Avenue and 19th Street?

A. We just walk around most anywhere.

Q. Walk around? Is traffic that slow at that time of morning?

A. I won't say it is that slow, but when I was working 3rd and 20th I went most anywhere I wanted to in the downtown area.

Q. You could do that in comparative safety; there is no necessity then for policemen at those intersections?

A. Yes, there is a necessity.

[fol. 71] Q. What accounts for the fact you could walk around anywhere you wanted to and leave your particular post?

A. Well, I can't say. I was just walking around.

Q. You had no particular reason for being at 2nd and 19th?

A. No.

Q. You hadn't received any radio call from police headquarters?

A. No.

Q. No one told you Shuttlesworth was on 2nd and 19th?

A. No.

Q. You knew the Defendant Shuttlesworth?

A. Never had seen him before.

Q. You had heard about him?

A. I had heard about him.

Q. You had read about him?

A. I had read about him.

Q. Had you seen him on TV?

A. Never had.

Q. Had you heard about him on the radio?

A. Not to my knowledge.

Q. You knew he was a very ardent advocate of civil rights.

A. Just what I read.

Q. You knew that on April 4, 1962?

A. Just what I read in the newspaper.

Q. And you didn't hear that morning, April 4, 1962, that he was down at 19th Street and 2nd Avenue?

A. I did not.

Q. But you just left your post at 3rd Avenue and 20th Street?

A. I didn't leave 3rd Avenue and 20th Street. I was assigned to 3rd Avenue and 20th Street.

Q. But you hadn't gotten there?

A. I had never gotten there.

Q. That was about 10:30 in the morning?

A. 10:30.

Q. You were on your way then to your post?

A. Eventually I would have gotten there.

[fol. 72] Q. Were you on a motor bike or patrol car?

A. Walking.

Q. And you were coming from roll call, is that right?

A. No. I had been to roll call thirty minutes prior to that.

Q. But you had not reached your assignment?

A. That's right.

Q. Did I understand you to testify you were receiving some police information or some instructions?

A. I was giving some information.

Q. You were giving some information? Did that information have to do with this particular incident?

A. It did not.

Q. Or to either of these defendants?

A. It did not.

Q. To whom were you talking—another policeman?

A. No.

Q. Detectives?

A. No.

Q. A commissioner?

A. No.

Q. Where were you, sir, when you first observed these people with reference to this particular diagram? Would you mind showing us with this piece of chalk?

A. Is this going south?

Q. This is south, this is 19th Street, this is 2nd Avenue west to east here. (Indicating.) This is Newberry's and this is Pizitz and that is where Patrolman Hallman was standing.

A. Well, I was approximately about here. (Indicating.)

Q. You had just crossed the alley heading south on 19th Street?

A. I was across the alley. I don't know exactly how far.

Q. You were between the alley and 2nd Avenue going south on 19th Street?

A. That's right.

Q. At that time you saw Mr. Byars and the defendants [fol. 73] on this corner, is that right?

A. I saw him with a group of people.

Q. On that corner? Was that the first time you had seen either Mr. Byars or the defendants that morning?

A. No, I saw Officer Byars prior to that.

Q. Where had you seen him prior to that?

A. At roll call.

Q. Had you seen him after leaving roll call?

A. I saw him I believe in the basement at a place on 3rd and 19th having coffee. I am not positive, but I believe he was there.

Q. But you had not seen him on 19th Street around this area before seeing him talking to the defendants?

A. Not that I recall.

Q. Now, when you first observed them what did you do? When you first observed them standing there on that corner what did you do?

A. I didn't do anything.

Q. Didn't you proceed to the corner and join them?

A. After I saw him bring Shuttlesworth out to the curb.

Q. Was there a large crowd on that corner when you first looked down there?

A. Well, I couldn't say there was a large crowd. To the best of my knowledge maybe ten or fifteen or twenty people.

Q. Were they both white and colored people?

A. Well, I know there was colored. There was probably white too.

Q. But you saw the colored people?

A. I saw that is who Officer Byars was talking to.

Q. Was he talking to all colored folks?

A. He was talking to a group. Who he was talking to in particular I don't know at this time.

Q. He might have been talking to everybody on that corner?

A. As far as I know, he was talking to a group.

Q. And that group had some colored folks in it, you know, but you don't know whether it had white folks in it or not?

A. I couldn't say.

[fol. 74] Q. But ordinarily the average corner has both colored and white folks waiting on the light to change?

A. Ordinarily.

Q. And probably there was some white folks in that group?

A. Could have been.

Q. When you got up to Officer Byars after he brought the Defendant Shuttlesworth out to the curbline at the time you approached them, how many officers were there then?

A. Well, to the best of my knowledge there was maybe two or maybe one.

Q. Can you identify him?

A. I believe Mr. Hallman was there. I don't know whether Mr. Renshaw was there then or came up later.

Q. When you arrived there what did you hear Officer Byars say and do?

A. He asked him for some identification I believe.

Q. Asked who?

A. Shuttlesworth.

Q. And you knew him when you looked at him?

A. I sure didn't.

Q. What did he do then after he asked for the identification?

A. Well, maybe he talked with him. I don't know.

Q. You don't know what he said to him?

A. Sure don't.

Q. What happened between that time and the time he arrested Reverend Shuttlesworth? What did Mr. Byars say to the Reverend Phifer?

A. He told him he couldn't speak to Reverend Shuttlesworth.

Q. Was that before or after Phifer had spoken to Shuttlesworth?

A. He came up and started talking to him.

Q. And he told him he couldn't talk to him and told him to move on?

A. Something to that effect.

Q. And when he told him to move on he arrested him?

[fol. 75] A. Maybe he told him that twice.

Q. But after he refused to move on he arrested him?

A. After he refused to move on he arrested him.

Q. And that was ten or twelve or fifteen feet from the curbline of 2nd Avenue on 19th Street, ten or fifteen feet away from the intersection?

A. That is where he brought Shuttlesworth out.

Q. How long was it between the time you first saw these people gathered on this corner and the time the police patrol came up and took them away to jail? In your best judgment tell us how long that took.

A. From the time they were first arrested?

Q. No, sir, from the time you first saw them until the car drove away with them.

A. I would say ten.

Q. Could it have been less than that?

A. It could have been less than that.

Q. Might it have been five minutes?

A. Could have been five or ten or fifteen minutes. I don't know exactly.

Q. Could have been five though?

A. Could have been five. I don't know.

Mr. Hall: Thank you. That is all.

Mr. Walker: No questions.

(Witness excused.)

Officer CECIL W. DAVIS, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, please.
A. Cecil W. Davis.
Q. What is your occupation?
A. Policeman, City of Birmingham.
Q. How long have you been a police officer?
A. Well, it will be twelve years this coming March.
[fol. 76] Q. How long have you worked traffic?
A. Eleven years.
Q. Were you in traffic on April 4, this year?
A. Yes, sir, I was.
Q. On that occasion did you see either or both of these defendants?
A. Yes, I did.
Q. Where were you at the time you first saw the defendants?
A. I was on the southeast corner of 2nd Avenue and 19th Street.
Q. Was anyone with you?
A. Officer Hallman when I first saw them.
Q. What did you see on the corner by Newberry's?
A. On the corner at Newberry's I saw a group of colored people standing in a group there at the crosswalk.
Q. What were they doing?
A. Well, they were just standing around in a group.
Q. Was Officer Byars there at that time?
A. Yes, he was.
Q. What was he doing, if anything?
A. Well, where I was standing I couldn't tell, other than he was talking to them.
Q. He was talking to them?
A. He was making motions like he was talking.
Q. Were there more than these two people in the group?
A. Yes.

Q. In your best judgment how many people were there in that group?

A. Around ten or twelve.

Q. Did you ever cross the corner to go over there?

A. Yes, sir, I did.

Q. What happened then, if anything, when you crossed the street?

A. That is when I got over across the street, Officer Byars motioned in my direction and I came over with Officer Hallman and I was operating a motor and when I got off of it I heard Officer Byars tell them they were under arrest.

[fol. 77] Q. All of them? Was he speaking to the group as a whole?

A. Sir?

Q. Do you know if he was speaking to the group as a whole, or who was he talking to at that time?

A. He was talking to the group but he told Shuttlesworth he was under arrest.

Q. You heard him place Shuttlesworth under arrest?

A. Yes.

Q. Was the group still there at that time?

A. There was a group of people around, yes.

Q. What happened when he placed Reverend Shuttlesworth under arrest?

A. Well, my motor was parked over on the west side of 19th Street. That is, the 19th Street side of Newberry's. And I went over there and used my radio and radioed for a car to come down.

Q. Were you present subsequent to that or after that when Reverend Phifer was placed under arrest?

A. I was.

Q. Where were you when Phifer was placed under arrest?

A. I was at the corner when he was placed under arrest.

Q. Tell the court what you heard and saw at the time Defendant Phifer was placed under arrest.

A. I heard Officer Byars tell Phifer to go on, that Shuttlesworth was under arrest, and he insisted on talking to him.

Q. What happened then?

A. He placed him under arrest too.

Q. Did you see anything else on this occasion that you haven't testified to?

A. No, sir.

Mr. Walker: That is all.

Cross examination.

By Mr. Hall:

Q. Officer Davis, is there a rule that says once you arrest a man no one can talk to him?

A. A written rule?

Q. Yes, sir, any kind of rule.

[fol. 78] A. There is a rule that we do that.

Q. Is there a written rule—is that part of the rules of your department, or is that the law?

A. That is the procedure we take.

Q. Do you have a rule of procedure that is written down?

A. To my knowledge I don't know.

Q. But that is your general rule of procedure?

A. Yes.

Q. Once you arrest a man no one can talk to him?

A. That's right.

Q. If you arrest my wife I can't say anything to her, and if I do I am guilty of failure to obey an officer?

Mr. Walker: I object to that as argument.

Mr. Hall: That is not argument.

The Court: That would be construed as argument by the Court of Review, and I assure you it will.

Mr. Hall: I will withdraw it, but may I inquire further into this rule?

The Court: I will take the questions as they come.

Q. Officer Davis, do you have a police manual to guide you?

A. Yes.

Q. Does the manual say this is the rule?

A. In my particular manual I haven't seen it in this manual. I have read that manual now over eleven years.

Q. Has anyone of your superiors told you that was a rule?

A. Well, like I said, it is customarily what we are supposed to do. When one is under arrest no one is to talk to him.

Q. Have you been advised by the city legal department that was the law?

A. Not the legal department personally, no.

Q. But it is your understanding that once you have placed a man under arrest, or a woman, for any charge then no one is to be allowed to converse with him?

A. That's right.

Q. On the morning of April 4, 1962, Officer Davis, you [fol. 79] were on a motorcycle or a motor scooter?

A. Yes.

Q. Do you have a particular area assigned to you that morning?

A. Yes.

Q. What area were you assigned to?

A. My territory covers 4th Avenue North.

Q. All up and down 4th Avenue North?

A. East and west.

Q. That would be between what streets?

A. Well, I control the parking regulations in that vicinity on 4th Avenue I would say from 13th Street to 26th Street.

Q. From 13th Street to 26th Street your job is to patrol the parking meters and to observe traffic along 4th Avenue?

A. That's right.

Q. Now, that would be something like thirteen blocks?

A. Something similar to that.

Q. Do you have any other area, or did you have any other area at this time besides 4th Avenue?

A. We are not confined to that specific area when you have a call to make.

Q. You sometimes get calls?

A. Yes.

Q. You get them from your police headquarters?

A. By radio or by word of mouth.

Q. Now, on this morning had you reported to your assigned territory?

A. I had.

Q. Did you receive a call to proceed from there some place else?

A. I was told to go to 2nd and 19th and give the officer on the corner there a call number, which is to call home.

Q. You were told this by your superiors at the police headquarters?

A. It was word of mouth.

Q. So, actually, what you were doing down there was to tell Officer Hallman, the regularly assigned officer, something?

[fol. 80] A. Right.

Q. So, on this particular occasion you didn't go there yourself, you went there to carry this message to Officer Hallman?

A. That's right.

Q. Tell me this, Officer Davis: Do you know Defendants Fred Shuttlesworth and Reverend Phifer?

A. Yes, I do.

Q. You know both of them?

A. I know them both.

Q. Have you seen them on several other occasions?

A. Yes, I have. My beat covers 4th Avenue down around 17th and I see both of them down there quite often. I know them real well.

Q. Are they generally known to the police department of the City of Birmingham, would you say?

A. I would say generally.

Q. Would you say that was true on April 4, 1962?

A. Then I don't know.

Q. That was just this April, but at that time you had been in the Police Department some eleven or twelve years and you know as a matter of fact both of them had been involved in several actions against city laws having to do with segregation and integration?

A. Yes.

Q. You know they had been prosecuted several times by the City of Birmingham and arrested many times by police officers in the City of Birmingham?

A. I don't know that. I just know what I read in the papers.

Q. Had you read that in the papers that they had been arrested several times for violation of municipal ordinances having to do with segregation?

A. Yes.

Q. Officer Davis, were you aware on April 4, 1962 of the fact that Negro citizens of Birmingham were engaged in a selective buying campaign against downtown stores in the City of Birmingham?

A. Say that again.

[fol. 81] Q. Did you know on April 4, 1962 that the Negro citizens of Birmingham were engaged in a selective buying campaign against the downtown stores of Birmingham?

A. All I knew of was a rumor.

Q. You had heard rumors to the effect that that was true?

A. Well, I don't know whether it was true or not. I heard it was a rumor.

Q. That it was going on? Had anyone discussed it with you at police headquarters?

A. No.

Q. Had any of the downtown merchants discussed it with you?

A. No.

Q. Do you know whether any plainclothes policemen were assigned to downtown stores during this period of time?

A. No, I don't.

Q. Do you know whether or not police activities was concentrated in this area at this particular time in an effort to break up this particular campaign?

A. No.

Q. You had not been briefed by any of your superiors?

A. No, sir.

Mr. Hall: That is all, Officer Davis. Thank you.

Mr. Walker: No further questions.

(Witness excused.)

Mr. Walker: That is the City's case, Judge Bailes.

Mr. Billingsley: Your Honor, at this time we would like to file motion to exclude the testimony and for judgments in both cases.

The Court: The Court would have to overrule the motions.

Mr. Billingsley: Take exception, Your Honor.

Mr. Hall: If Your Honor please, may we have about five or ten minutes recess?

(Short recess.)

[fol. 82] EVIDENCE ON BEHALF OF THE DEFENDANTS

JAMES ARMSTRONG, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hall:

Q. Will you state your name and address, please, sir?

A. James Armstrong, 227 9th Court West.

Q. That is Birmingham, Alabama?

A. Yes.

Q. What is your occupation, please, sir?

A. I am a barber.

Q. Do you know the Reverend F. L. Shuttlesworth and the Reverend Phifer?

A. I do.

Q. Did you know them on April 4, 1962?

A. Yes.

Q. On that date, Mr. Armstrong, were you in downtown Birmingham at or near the intersection of 2nd Avenue and 19th Street about 10:30 in the morning?

A. I don't recall the date, but I was downtown with them one morning.

Q. On April 4, 1962 the Reverend F. L. Shuttlesworth was arrested for failure to move on at the corner of 2nd Avenue and 19th Street in downtown Birmingham. On that occasion were you there?

A. I was there.

Q. Were you there when the Reverend Phifer was arrested when he attempted to talk to the Reverend Shuttlesworth?

A. I was.

Q. And that was on April 4, 1962?

A. Yes.

Q. Now, Mr. Armstrong, were you with the Defendant F. L. Shuttlesworth on that occasion?

A. I was.

[fol. 83] Q. Had you traveled with him to the downtown area?

A. That day?

Q. That day.

A. I was.

Q. Had you been some place with him before you got downtown?

A. Yes.

Q. Where had you been?

A. The post office court room.

Q. That is the Federal Court, Federal post office?

A. Yes.

Q. Had you been involved in some legal matters there in the court room that morning?

A. That morning I don't recall.

Q. Had you been to court that morning?

A. Yes.

Q. What time were you in court?

A. About 9:30. Between 9:00 and 10:00 o'clock.

Q. Do you remember about what time you left the Federal Building?

A. I don't remember exactly.

Q. In your best judgment what time would you say it was?

A. It was past 9:30 because he was due in court at 9:30, and it was after 9:30 when we left I am sure.

Q. Let's go back a little bit and ask you—you were due there at 9:30?

A. Yes.

Q. You had some matter set at that time?

A. Sure.

Q. And you were there at that hour?

A. That's right.

Q. Do you remember which court, whether it was Judge Grooms or Judge Lynne?

A. Judge Grooms' court.

Q. Do you recall how long you were in court, or do you have some judgment as to how long you remained there in court?

[fol. 84] A. It wasn't long. Just got to the door I think and turned around.

Q. In your best judgment would it be five or ten or fifteen minutes?

A. No more than that.

Q. No more than ten or fifteen minutes?

A. No more.

Q. And you proceeded from there and did you go directly downtown?

A. We walked downtown.

Q. Now, where is the Federal Building?

A. You mean what street?

Q. Yes.

A. It is 5th Avenue, I believe, and 19th Street or 18th Street either one.

Q. 19th Street and 5th Avenue?

A. Yes.

Q. And you walked from that point to 2nd Avenue and 19th Street. Were you walking fast?

A. No, we weren't walking fast.

Q. You were walking slow?

A. Yes.

Q. Now, will you tell us, sir, what happened when you got to 2nd Avenue and 19th Street? Before you go into that, how many persons were with you?

A. About four or five. I am not sure.

Q. Walking along with you?

A. With me?

Q. Yes, sir, you and the defendants.

A. Reverend Phifer and Reverend Shuttlesworth was walking alone.

Q. And who else?

A. Well, the rest of them were behind us.

Q. The rest of who—whoever was with you?

A. Yes, and they are witnesses in the court.

Q. Who was with you, sir?

A. Nobody but Reverend Shuttlesworth and Reverend Phifer.

[fol. 85] Q. Now, you, Reverend Shuttlesworth and Reverend Phifer got to 19th Street and 2nd Avenue, is that correct?

A. That's right.

Q. They were together when you got there?

A. Yes.

Q. Tell the court what happened when you got to 19th Street and 2nd Avenue, or as you approached it. Begin with 3rd Avenue and 19th Street and tell us what happened.

A. Well, as we approached the corner on 19th Street and 2nd Avenue, as we walked up to the corner the light changed which stopped us, and the police came out of Newberry's and said, "Move on." And he said, "Move on" again and pointed to Reverend Shuttlesworth.

Reverend Shuttlesworth asked him, "Where to," and he said, "Anywhere, just move on."

And Fred said, "I will go in the store." So, he arrested him.

Q. And then he arrested him after the Defendant said he would go in the store?

A. Yes.

Q. Now, let's go back. As you came down 19th Street you were going south on 19th Street, is that correct?

A. Yes.

Q. Moving from 3rd Avenue to 2nd Avenue?

A. That's right.

Q. As you approached the alley did you see a police officer?

A. Well, I saw him—the whole time while I was there I saw policemen.

Q. Did you see the policeman that stopped you at the corner of 2nd Avenue and 19th Street—did you see him anywhere on 19th Street before the arrest?

A. No, I didn't see him until he came out of the store.

Q. You saw him when he came out of the store?

A. Yes.

Q. When he came out how long had you been standing on that corner?

A. Hadn't been standing.

[fol. 86] Q. What happened, he came out immediately as you came up to the corner?

A. Yes.

Q. Before you stopped he came out?

A. That's right. We were still moving coming to the corner.

Q. And he came out of Newberry's Department Store?

A. Almost side by side.

Q. And he said to move on. Now, where did he place himself when he stopped you?

A. He placed himself in front of me to Reverend Shuttlesworth.

Q. In front of you so you could not move on?

A. That's right.

Q. What were you doing, were you moving south?

A. Moving south.

Q. To cross at the corner of 19th and 2nd Avenue?

A. That's right.

Q. And your reason for stopping there was what?

A. The light.

Q. The light changed and was against you?

A. That's right.

Q. Now, did the policeman say "Move on" while the light was against you?

A. Yes.

Q. And he said "Move on" again?

A. Yes.

Q. And the Defendant Shuttlesworth asked him "To move where?"

A. That's right.

Q. And what did the officer say?

A. "Anywhere, just move on."

Q. And what did Reverend Shuttlesworth say?

A. "Well, I will go in the store."

Q. He started in the store?

A. Yes.

Q. Did you start with him?

A. No.

[fol. 87] Q. Did the Reverend Phifer start with him?

A. No.

Q. Reverend Shuttlesworth went on by himself?

A. But he didn't get hardly two steps in the store, he started to go in and the officer grabbed him by the arm.

Q. What happened then?

A. Well, he arrested him.

Q. After he arrested him?

A. What happened to me?

Q. To anybody, or to everybody. What did the police do with Reverend Shuttlesworth?

A. He carried him to the corner out on the curb of the street.

Q. I direct your attention to this diagram we have drawn on the blackboard here, this is Defendant's Exhibit 1 we are referring to, and it purports to be a drawing of the intersection of 19th Street and 2nd Avenue North. 19th Street is from top to bottom, that is north and this is south; 2nd Avenue goes from side to side, and this is 2nd Avenue West and that is 2nd Avenue East. (Indicating.) On this corner, which is the northwest corner of the intersection, is the Newberry's Department Store. Now, this is the corner, the northwest corner which you were approaching, as you said, when the policeman came up, is that correct?

A. That's right.

Q. Is there an entrance to the Newberry's Store right at this corner?

A. Yes, there is.

Q. Right at this corner there is an entrance to the Newberry's Store?

A. Yes.

Q. Now, after the policeman said for the Defendant Shuttlesworth to move on, he said, "Well, I will go in the store," and he started in the store and your testimony was the officer stopped him after he got about two steps?

A. Yes.

[fol. 88] Q. And then he took him where?

A. To the corner.

Q. Come and show us where you mean.

A. Here. This is the corner here. (Indicating.)

Q. Did he take him right on the corner?

A. About three or four steps from the corner.

Q. Along 19th Street?

A. That's right.

Q. How far from the corner would you say in terms of feet?

A. Well, just four or five feet I guess.

Q. Could it have been as many as ten or twelve feet?

A. It could have.

Q. When he took him over there what did he do?

A. Well, I guess he called the patrol wagon.

Q. Don't guess. What did he do?

A. That is all I could see.

Q. How close were you to him?

A. I was up beside the wall of Newberry's on 19th Street.

Q. About here? (Indicating.)

A. That's right. Observing.

Q. How many persons were along that wall with you?

A. I didn't pay any attention to how many.

Q. In your best judgment how many were there? Were there more than one or was there more than yourself there?

A. At the time he was arrested I guess maybe five or six.

Q. Five or six people were standing along this wall over here watching?

A. Sure.

Q. And you were standing there. Did you see the Reverend Phifer walk up to the arresting officer and the Defendant Shuttlesworth?

A. Yes.

Q. How close were you to them then?

A. I was standing in the same spot.

Q. How many feet would you say in your best judgment?

[fol. 89] A. The whole distance about ten feet.

Q. Could you hear what they said very easily?

A. No.

Q. Did you hear what the Reverend Phifer said?

A. No.

Q. You couldn't hear that?

A. No.

Q. Did you hear what the officer said to him?

A. No, I couldn't hear what he said.

Q. Did you see them take the Reverend Phifer into custody?

A. Yes, I did.

Q. Were you approached by the arresting officer and placed under arrest?

A. No.

Q. How many officers were present on the scene at that time?

A. I believe there was about three or four.

Q. Could we say that is your best judgment?

A. In my best judgment three or four.

Q. Could there have been as many as six?

A. On the arrest, no.

Q. At this particular time were they all standing there together, all these officers?

A. Yes.

Q. How long would you say it took them to arrest the Reverend Shuttlesworth and the Reverend Phifer and to take them away from the scene after you first arrived at the intersection?

A. Oh, I don't know. Maybe about five or six minutes or something like that.

Q. A very short time?

A. Very short time.

Q. The arrest was within minutes, would you say?

A. Sure.

Q. And after the arresting officer had removed the defendant to the side how long did it take the patrol car to then [fol. 90] come up and take them away?

A. I don't recall seeing a patrol car.

Q. Did you see any car at all come and take him away?

A. No.

Q. You don't remember how he was taken away?

A. I don't remember how he was taken away.

Mr. Hall: That is all.

Cross examination.

By Mr. Walker:

Q. Your name is James Armstrong?

A. Right.

Q. I believe you testified that you were coming down 19th going south on 19th coming from the Federal Courthouse?

A. That's right.

Q. There were four or five people in the group you were in or straggled out, coming together from the courthouse?

A. Sure.

Q. Now, when you got to the intersection of 2nd and 19th did you meet any friends you knew at that intersection?

A. No, I did not.

Q. Did anybody come up that knew the Reverend Phifer or the Reverend Shuttlesworth?

A. Not at that intersection.

Q. How many people were in your group at the intersection of 2nd and 19th?

A. I didn't have a group.

Q. Well, the people you were with.

A. Well, some of them were behind.

Q. Well, the ones that were behind and the ones that were —how many were coming from the courthouse?

A. About four or five.

Q. All told?

A. Maybe, yes.

Q. I believe you said you stopped at that intersection waiting for a light?

[fol. 91] A. That's right.

Q. Do you know how long the light holds red at that particular intersection?

A. I really don't know.

Q. Do you have an opinion?

A. Well, sixty seconds I imagine.

Q. You don't know that it holds seventeen seconds?

A. I don't know that.

Q. How long were you standing at that intersection?

A. I was walking to the intersection. I didn't get a chance to stand.

Q. Do you know whether the light changed while you were at the corner of 2nd and 19th?

A. Changed against me?

Q. For you or against you.

A. That is what we were waiting for, for it to change in my favor, but it did not.

Mr. Walker: No further questions.

Redirect examination.

By Mr. Hall:

Q. Do I understand you to say the officer came up to the intersection at the same time that you, the Reverend Shuttlesworth, and Reverend Phifer reached the intersection?

A. Yes.

Q. And he began talking to you there?

A. Began talking "Move on", yes, sir.

Q. And at that time the light had changed against you, is that right?

A. That's right.

Q. Did the light change while the officer was talking, or do you know?

A. No, the light was still holding.

Q. Where was the officer standing with reference to where you all were standing? Was he standing in front of you or behind you?

A. He was standing almost beside me.

[fol. 92] Q. Was he in front or behind the Defendant Shuttlesworth?

A. He was behind him but right at him.

Q. So, he came up at the same time that you reached the intersection?

A. That's right.

Q. You had not been standing there at all?

A. No, no. We walked there together.

Q. Incidentally, there has been some reference to the size of your group. Tell us were there many Negroes in town at all on this particular day?

A. No.

Q. Did you see any?

A. Very few.

Q. Isn't it a fact that this was during the time the Negroes of this city were carrying on a selective buying campaign in the downtown area?

A. Yes.

Q. Were you aware of that campaign?

A. Sure.

Q. Were Negroes generally aware of it?

A. Well, I guess so.

Q. Those with whom you came in contact communicated to you that they were aware of that campaign?

A. That's right, sure.

Q. And in your best judgment were they observing the campaign?

A. Well, I think so.

Q. They were not going into the downtown area, is that correct?

A. That's right.

Q. So that when you went downtown your group was conspicuous because of the fact there were very few Negroes in the downtown area?

A. Sure.

Mr. Hall: That is all.

Mr. Walker: No questions.

(Witness excused.)

[fol. 93] The Court: Could we come back in the morning?
Mr. Hall: Yes, Judge.
The Court: What hour?
Mr. Walker: 9:00 o'clock.

(Whereupon at 4:15 P.M. the court was adjourned until 9:00 o'clock A.M., October 30, 1962.)

Adjournment

October 30, 1962—9:00 A.M.

(Whereupon court was reconvened pursuant to adjournment.)

Robert J. Norris, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hall:

Q. State your name and address, please.
A. Robert J. Norris, 109 15th Court North.
Q. What is your occupation, please, sir?
A. Railroad mechanical helper, retired.
Q. Mr. Norris, are you also a minister?
A. I am.
Q. Are you presently engaged in the ministry?
A. Part time.
Q. Reverend Norris, are you acquainted with these defendants here, F. L. Shuttlesworth and the Reverend Phifer?
A. Yes, I am.
Q. Were you acquainted with them on April 4, 1962?
A. Yes, I was.
Q. On that date at about 10:30 in the morning did you see them in downtown Birmingham?
A. I did.

Q. Did you observe them at or about 19th Street and 2nd Avenue North?

A. I did.

Q. At that time will you tell the court what you saw happen, if anything?

[fol. 94] A. As we arrived they were walking just ahead of me.

Q. You were walking where?

A. On 19th Street.

Q. Were you walking north or south on 19th Street?

A. Going south on 19th Street.

Q. Where?

A. Between 2nd and 3rd Avenue.

Q. As you arrived where, at 2nd Avenue and 19th Street?

A. At 2nd Avenue and 19th Street.

Q. All right. Go ahead.

A. As we arrived at 2nd Avenue and 19th Street, them being just ahead of me, we all came to a slowdown for the traffic light and at that time the officer came out and—

Q. Came out from where?

A. From the entrance to Newberry's Store on the corner, and walked around ahead of the Reverend F. L. Shuttlesworth and said, "Move on." And the Reverend Shuttlesworth said, "Move where, Officer?" And he says, "Anywhere but here."

So, the Reverend Shuttlesworth said, "I will go in the store then."

So, the officer chased around and got up to him and caught him and told him he was under arrest.

Q. How close were you to the Reverend Shuttlesworth at that time?

A. Approximately five feet away.

Q. Were you walking with the Reverend Shuttlesworth?

A. No, I was just behind him.

Q. About five feet behind him?

A. About five feet behind him.

Q. Now, had you seen the officer before he appeared at that intersection?

A. Well, yes, sir, I saw the officer inside the store.

Q. Where was the officer when you first saw him?

A. Passing the door just before you get to the corner. He passed the door about the same time I did on the outside. [fol. 95] I was on the outside and he was on the inside.

Q. As you passed the door on the outside, that is the Newberry's door?

A. That's right.

Q. How close is that door to the corner of 2nd Avenue and 19th Street?

A. I don't recall just exactly the distance, but it is a very short distance. I am not sure whether it is middleways the store or a little closer to the corner than to the alley side.

Q. Reverend Norris, will you look at this diagram here on the blackboard which is Defendant's Exhibit 1 purporting to be a drawing of the 19th Street and 2nd Avenue North intersection. I direct your attention to this diagram. 19th Street runs from top to bottom, that is, from north to south on this board, and 2nd Avenue runs from west to east. Now, the Newberry's Store, this little oblong situation here is supposedly Newberry's Store, and it shows here on the diagram it is on the northwest corner of that intersection. Now, can you indicate here where in your best judgment that door is that you were talking about in this building?

A. There is a door on the 19th Street side. I believe it is near the center.

Q. Will you come up here and indicate it for us?

A. In my best judgment this door on the 19th Street side seemed to be somewhat along here. (Indicating.)

Q. About the center of the building?

A. About the center of the building.

Q. Is there another entrance here at the corner?

A. Yes, there is.

Q. Right there?

A. Here. (Indicating.)

Q. Now, let the record show the witness is indicating about the center of this oblong on 19th Street as being an entrance and the corner at 2nd Avenue and 19th Street as being an entrance.

Now, where you first saw the officer did you see him at [fol. 96] the center door as you passed?

A. He was headed toward the front the same as I was.

Q. You were walking on the outside on the sidewalk?

A. That's right.

Q. Alongside Newberry's Store?

A. That's right.

Q. And you saw the officer inside the store—that door is a glass door, is that right?

A. That's right.

Q. And you saw this officer walking inside toward the front of the building?

A. Yes.

Q. How fast were you walking?

A. Just a slow pace that you would walk in town.

Q. Just an ordinary pace?

A. Yes.

Q. How was the officer walking when you saw him?

A. He appeared to be a little bit faster than I was walking.

Q. Where did you next see this officer?

A. At the corner entrance. When I arrived at the corner entrance he was coming out the corner entrance.

Q. He was coming out as you arrived there?

A. He was coming out.

Q. Did you know the officer's name at that time?

A. I did not.

Q. Have you since found out who the officer was?

A. No, I have not.

Q. Was that the officer that arrested Reverend Shuttlesworth on that occasion?

A. It was the one.

Q. And if I told you his name was Officer Byars, that would be the same man that arrested Reverend Shuttlesworth on that occasion? You were there, were you not?

A. Yes, sir.

[fol. 97] Q. Did you arrive at that corner about the same time that Reverend Shuttlesworth did?

A. Almost. Just a step or two ahead.

Q. And the officer came out of the store at that same time?

A. That's right.

Q. Was the Reverend Shuttlesworth standing on that corner when the officer arrived?

A. I might say he was standing because he had just come to a stop.

Q. He had just come to a stop?

A. The light had turned red and everybody going that way was supposed to stop.

Q. And the officer came up there?

A. About the same time. It all happened about the same time. About the time he stopped he walked around in front of him and said, "Move on." And then he asked, "Move on where, Officer?" because he was in front of him and he asked, "Move on where?"

He said, "Anywhere but here." So, then he turned and says, "Well, I will go in the store."

Q. The officer had not at that time placed him under arrest?

A. No, he had not.

Q. Did you hear the officer when he said, "You are under arrest"?

A. Yes.

Q. Was that after the Reverend Shuttlesworth had attempted to go in the store?

A. It was.

Q. Now, you were standing there at that corner at that time. Did you move on when the officer said "Move on"?

A. No, I did not. I had nowhere to go, nowhere to move on.

Q. Did you see anyone else move anywhere?

A. No one but the Reverend Shuttlesworth.

Q. He is the only one who attempted to move, is that right?

A. That's right.

Q. Did the officer arrest anyone else other than the Reverend Shuttlesworth?

[fol. 98] A. No, not at that particular moment.

Q. Were you still there on that corner when that officer arrested the Reverend Phifer?

A. I was.

Q. Where were you standing at that time?

A. Almost in the same place.

Q. Almost in the same place?

A. Just turned around.

Q. You hadn't moved from that spot?

A. That's right.

Q. After the officer arrested Reverend F. L. Shuttlesworth what did he do with him?

A. He taken him over near the corner at the police car.

Q. The police car?

A. He taken him over near the corner—I don't know whether it was a police car on that corner or not, but he taken him over at the corner at the edge of 19th Street.

Q. At the edge of 19th Street near the curb on 19th Street?

A. Yes.

Q. About how far from the intersection there of 2nd Avenue?

A. How far from the intersection?

Q. Yes.

A. It was right on the particular corner.

Q. Right on the corner?

A. Yes.

Q. Directing your attention again to Defendant's Exhibit 1, Reverend Norris, and pointing out to you this is 2nd Avenue, this is the north curbline of 2nd Avenue, and this is 19th Street; now, this is the corner where the incident occurred. (Indicating) Where with reference to that corner, in your best judgment, did the officer take the Reverend Shuttlesworth after he arrested him?

A. You want me to come and point it out?

Q. Yes, please.

A. Right here. (Indicating)

Q. Now, that is the entrance to Newberry's Store. Now, [fol. 99] this is the curbline here.

A. Right here. (Indicating).

Q. About right there? In your best judgment about how far is that from the 2nd Avenue curbline?

A. From the 2nd Avenue curbline?

Q. Yes.

A. It is across the walkway. I would say about eight feet, whatever the distance of that walkway is.

Q. Could have been ten or twelve?

A. Could have been.

Q. So, he took him over there on that curbline?

A. Yes.

Q. Will you tell the court what happened there?

A. He called for Reverend Phifer.

Q. Who called for him?

A. Reverend Shuttlesworth.

Q. Where was the Reverend Phifer?

A. Reverend Phifer was standing some place in the same crowd. We had all gotten mixed together at that time.

Q. Where, there on that corner?

A. Near that corner. We had stopped there first to observe that traffic light.

Q. There were quite a few people there on that corner then?

A. That's right.

Q. Were there some white persons standing there then?

A. There were.

Q. And some colored persons?

A. Yes.

Q. And you were all standing there watching the officer and the Reverend Shuttlesworth, is that right?

A. That's right.

Q. Now, go ahead and tell the Court what happened. You say Reverend Shuttlesworth called for Reverend Phifer?

A. That's right. And the Reverend Phifer went over to [fol. 100] him and the officer said, "You can't talk to him unless you want to go to jail." And immediately he put Reverend Phifer under arrest and said, "You are also under arrest." So, they stood the two up side by side.

Q. All during this time you remained there on that corner?

A. I did.

Q. You were there when the officer first walked up?

A. That's right.

Q. And you were there after they took the Reverend Shuttlesworth and the Reverend Phifer to jail.

A. That is true.

Q. Were there other persons there who remained there all during this time?

A. Yes, quite a number of them.

Q. Quite a number out there on that corner observing this arrest?

A. That's right.

Mr. Hall: That is all. Thank you.

Cross examination.

By Mr. Walker:

Q. Reverend Norris, you testified, I believe, that the Defendant Shuttlesworth called Phifer; is that true?

A. That is true.

Q. Now, what was the conversation that transpired when the Defendant Phifer came on the scene?

A. When he came to the Reverend Shuttlesworth?

Q. That's right.

A. I know of no conversation. I know the officer placed him under arrest.

Q. What did the officer say to him?

A. The officer said, "You can't talk to him."

Q. Had Phifer attempted to talk to the Defendant Shuttlesworth at that time?

A. He hadn't quite got to him.

[fol. 101] Q. And he just said, "You can't talk to him," before he ever said a word?

A. That's right.

Q. And then he arrested him before he ever said anything?

A. Unless he said something though that I couldn't hear. I couldn't hear what transpired over there. I was about eight or ten feet away, but he arrested him immediately.

Q. And there was no conversation you say to the effect that, "I am going to talk to him," and the officer says, "I told you three times already you are not going to talk to him, I will arrest you;" that didn't transpire, or words to that effect?

A. I heard no words of that nature.

Q. And is it your testimony that the defendant Phifer just came out of a store, or wherever he was, and came up to the Defendant Shuttlesworth who was being arrested and the officer out of a clear blue sky says, "You can't talk to this defendant"?

A. That's right.

Q. And then he arrested him forthwith?

A. That's right.

Mr. Walker: No more questions.

Redirect examination.

By Mr. Hall:

Q. Now, was the Reverend Phifer standing on the corner near you when the Reverend Shuttlesworth called him?

A. He was.

Q. He wasn't in a store, was he?

A. No.

Q. He was there on that corner where Reverend Shuttlesworth had been arrested?

A. Yes, sir.

Q. You heard the Reverend Shuttlesworth call to him?

A. Yes, I did.

Q. And the Defendant Phifer responded to that call and walked up to the officer and Reverend Shuttlesworth?

A. Yes.

[fol. 102] Q. You heard the officer say, "You can't talk to the man, he is under arrest"?

A. That's right.

Q. But you didn't hear any other conversation?

A. No, I did not.

Q. Is it possible there was some other conversation that you may not have heard?

A. I hardly think so, but yet there could have been because sometimes the crowd was a little noisy and there might have been something said I didn't hear.

Q. But you did hear the officer say, "You can't talk to this man, he is under arrest"?

A. That's right.

Q. Reverend Norris, when the officer first approached at that corner did he address the Defendant Reverend Shuttlesworth by name?

A. When he first arrived at the corner?

Q. Yes, when he said, "Move on."

A. No.

Q. Did he ever address the defendant by name?

A. No, not that I know of.

Mr. Hall: That is all.

Mr. Walker: No questions.

(Witness excused.)

Walter King, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hall:

Q. State your name and address, please, sir.

A. Walter King.

Q. And your address?

A. 4225 43rd Avenue North.

Q. That is in the city of Birmingham?

A. Yes.

Q. What is your occupation, please, sir?

[fol. 103] A. Well, I haven't had an occupation about ten years. I am on a pension.

Q. You are retired?

A. I am.

Q. What was your former occupation?

A. Boilermaker helper for the L&N.

Q. For the L&N?

A. Yes.

Q. That is the Louisville Nashville Railroad?

A. Yes.

Q. And you have been retired for sometime?

A. Yes, 1954.

Q. Are you acquainted with the Defendant F. L. Shuttlesworth?

A. Well, I have been knowing him for a good little while.

Q. Are you acquainted with the Defendant Phifer?

A. I have been seeing him a good little while.

Q. Did you know them on April 4, 1962?

A. Yes. I knew him then.

Q. Did you see them on the morning of April 4, 1962 at about 10:30 o'clock in the morning?

A. Yes.

Q. Where did you see them?

A. I seen them down on 19th Street between 3rd and 2nd Avenue.

Q. Between 2nd and 3rd Avenue?

A. That's right.

Q. Will you tell the court what happened on that occasion, if anything?

A. Well, I was walking along behind him, me and Mr. Norris, and just before I got to the light—

Q. Just a moment. You were walking along 19th Street behind them?

A. Yes.

Q. Which way were you going on 19th Street?

A. Going south.

[fol. 104] Q. You were going between 3rd and 2nd Avenues?

A. That's right.

Q. All right. Go ahead for a minute.

A. Well, when I got up to the light the light turned red. They were stopped and I was right behind them, and all at once the police came from somewhere and come by me and says, "Get out." Reverend Shuttlesworth says, "Where to?"

He says, "I don't care where you go just so you leave here." And he said, "Well, I will go back in the store." And turned around; and I wanted to see what it was all about and I turned and went behind them and just before I got inside Newberry's Store he come by me again and said, "You are arrested," and pulled him on back.

Q. Was this at the corner of 2nd Avenue and 19th Street North?

A. What?

Q. Was this at the corner of 2nd Avenue and 19th Street North in the City of Birmingham?

A. That's right.

Q. Did you know the officer's name at that time?

A. No, I am not acquainted with any of the officers as long as I have been in Birmingham.

Q. Had you seen that officer before that time?

A. If I did I didn't know it.

Q. Were you arrested at that time?

A. No, he didn't say anything to me.

Q. How close were you to the Reverend Shuttlesworth when the officer first appeared?

A. Right behind him.

Q. Right behind him?

A. There was one couple in front of me and him.

Q. Another couple of people between you and the Reverend Shuttlesworth?

A. Yes.

Q. How long did you say the Defendant Shuttlesworth [fol. 105] had been standing there at the corner when the officer appeared?

A. Looked like about three or four minutes or not hardly that long.

Q. Did the light change while he was standing there at 19th and 2nd Avenue? Did the light change, the traffic signal?

A. The light was red when they walked up there but after this trouble come I don't when it changed again because I didn't pay no more attention.

Q. When you first walked up what was the traffic signal?
A. It was red.
Q. That means it was red to pedestrians?
A. Yes.
Q. And you couldn't cross the street?
A. No, not unless you violated the law.
Q. You had to wait until it turned green?
A. That's right.
Q. Did that light turn green before the officer came up?
A. I don't know.
Q. You don't know?
A. I didn't pay any attention to that light. I didn't pay any attention because when I walked up there it wasn't too long before the police passed by me and I didn't pay any attention to the light any more.
Q. And you don't know whether there was a change or not?
A. No.
Q. Did you hear the officer when he first told Reverend Shuttlesworth that he was under arrest?
A. Yes.
Q. Did you hear the entire conversation between the officer and the Defendant Shuttlesworth?
A. No more than what he said, "Leave on."
Q. Well, you heard him say leave here or leave on or "Move on"?
A. Yes, and he asked him, "Where to" and he said, "I don't care as long as you leave here."
Q. How many times did you hear the officer ask Rev-
[fol. 106] erend Shuttlesworth to move?
A. That is all I heard.
Q. One time?
A. That is all I heard.
Q. Was there other folks there besides you and Reverend Shuttlesworth?
A. Lots of people standing there, white and colored.
Q. Was the officer addressing his remarks to the defendant Shuttlesworth or to all these people who were standing there?

A. He was looking at his face. He was looking right at him.

Q. When you say looking at his face to whom are you referring?

A. Reverend Shuttlesworth.

Q. He was looking into Reverend Shuttlesworth's face?

A. Yes.

Q. Did the officer place himself directly in front of the Defendant Shuttlesworth?

A. Just right about halfway in front of him and said, "Move on."

Q. Now, tell me this: Did any of the other persons standing there on the corner move on?

A. If they did, I didn't see them.

Q. Did you move on?

A. No. I stepped back a little bit.

Q. You stepped back?

A. Yes.

Q. Did you see the Reverend Phifer at that time?

A. Yes.

Q. You saw all the persons. Would you say there were eight or ten or twelve people standing there on that corner at that time?

A. Yes.

Q. Did they all remain standing there during this entire conversation?

A. Wasn't too long. Yes, they all stood there because they had to wait until the light changed. Now, I don't know whether they ever did disappear.

[fol. 107] Q. How long did all this take?

A. Well, I don't know exactly how long it was.

Q. In your best judgment?

A. I guess about five minutes.

Q. All of it took about that long in your best judgment? So, you heard the officer ask the Reverend Shuttlesworth one time to move on, is that correct?

A. Yes.

Q. And the Reverend asked him where?

A. That's right.

Q. And the officer said, "Anywhere but here"?

A. Uh huh.

Q. So, the defendant says, "Well, I will go in here into Newberry's"?

A. Yes. "Well, I will go in the store." And he turned immediately around and went to the door, and I wanted to see what it was about and I turned and went behind them.

Q. When you say he turned immediately around and went to the door, let me direct your attention to this diagram, Defendant's Exhibit 1, purporting to be a drawing of the intersection of 2nd Avenue and 19th Street North, showing here in this little oblong figure which purports to be Newberry's Department Store situated at the northwest corner of that intersection—

A. That's right.

Q. Assuming that this corner here, the northwest corner, where the incident occurred and that this is the corner of Newberry's Store there. (Indicating.) Will you indicate to us what door the Reverend Shuttlesworth went in or where the door was located he went into?

A. Right on the corner of 2nd Avenue and 19th Street.

Q. There is a door into the store right at that corner?

A. Right at that corner.

Q. Approximately how far from the place where the Reverend Shuttlesworth was standing waiting on the light to change in your best judgment?

[fol. 108] A. Well, I don't know. Some people was in front of him.

Q. I want to know about how far is that door to Newberry's Store from the place where the Reverend Shuttlesworth was standing talking to the officer?

A. I couldn't even place how far that was. Looked to me like fifteen or twenty feet.

Q. That is your best judgment?

A. Yes.

Q. So, the Reverend Shuttlesworth turned around then and proceeded to go into the store?

A. Yes.

Q. You turned around and went right behind them?

A. Yes.

Q. Were you ahead of the officer when you started in the store?

A. Yes.

Q. How far did you all get before the officer caught up with the Reverend Shuttlesworth?

A. When I noticed the officer he was passing by me and reached and got Reverend Shuttlesworth by the shoulder and said, "You are arrested."

Q. Had the Reverend Shuttlesworth got into the store at that time?

A. Just inside the door.

Q. Where were you?

A. I was just behind.

Q. You were not in the store?

A. No.

Q. But you were close enough to hear the officer say, "You are under arrest?"

A. Yes.

Q. The officer passed you; he didn't say anything to you?

A. No.

Q. Did he ever arrest you?

A. No.

[fol. 109] Q. Did he ever say anything to you at all?

A. No, never said anything to me at all.

Q. And that is the first time you heard him say anything about arrest?

A. That is the first time I heard him say anything about arrest.

Q. And during all this time you were in the immediate vicinity of both parties?

A. I was near enough to hear the conversation.

Mr. Hall: Thank you.

Mr. Walker: No questions.

(Witness excused.)

SIMPSON HALL, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hall:

Q. Will you state your name and address and occupation to the court.

A. Simpson Hall, employed at Loveman's.

Q. Where do you live?

A. 2421 Carlos Avenue, Powderly.

Q. Do you know these two defendants, the Reverend Shuttlesworth and the Reverend Phifer?

A. Yes, I do.

Q. Did you know them on the 4th of April, 1962?

A. Yes, I did.

Q. On that date did you see these two defendants on 19th Street at about 2nd Avenue North about 10:30 in the morning?

A. Yes, I did.

Q. Will you tell the court what happened at that time, if anything?

A. Well, I was traveling from 3rd Avenue going south on 19th Street. I were I guess about six or seven feet behind Reverend Phifer and Reverend Shuttlesworth walking.

Q. Excuse me. When you say you were going south on 19th Street, that means you were going from 3rd Avenue toward 2nd Avenue on 19th Street.

[fol. 110] A. That's right.

Q. Go ahead.

A. I was walking behind them and this officer come from out of this Newberry's. Before the Reverend Phifer and Shuttlesworth could get to the light he come and kind of stepped in front of Reverend Shuttlesworth and told him to move on. So, he asked the officer, says, "Move on where?" and he said, "Anywhere but here."

So, then, Reverend Shuttlesworth turned and went to go back into the store and he walked in the store and told Reverend Shuttlesworth he was under arrest.

Q. Now, when you say he turned and attempted to go back into the store, which store was that?

A. Newberry's Store.

Q. And he attempted to go into—is there an entrance to Newberry's near this corner?

A. Yes, it is the side entrance, the one that is facing 19th.

Q. Facing 19th?

A. Yes.

Q. How close were you to the officer and to Reverend Shuttlesworth at that time?

A. I was I guess five feet.

Q. Five feet?

A. Yes.

Q. Could you clearly hear what the officer said and what the Reverend Shuttlesworth said?

A. Well, all I heard Reverend Shuttlesworth say to the officer was to ask him where to move and so, he said, "Any place but here."

Q. You heard the officer make that statement?

A. Yes.

Q. How many times did you hear the officer ask the Reverend Shuttlesworth to move?

A. Once.

Q. In your best judgment how long did the Reverend Shuttlesworth stand there between the time the officer [fol. 111] came up and his attempt to go into the store?

A. Well, the minute that he told him to move Reverend Shuttlesworth asked him to "Move where?" and he said, "Any place but here," and, so, he turned and went into the store.

Q. Turned around?

A. Yes.

Q. He didn't say anything, just turned to go in the store?

A. Yes.

Q. What did the officer do?

A. He put his hand on his shoulder and said he was under arrest.

Q. Were there any other persons standing on that corner at the time the officer came up?

A. Well, that I can't recall right now.

Q. You hadn't quite reached the corner?

A. No, I hadn't.

Q. Do you know whether the light was green or red?

A. Well, they really hadn't got to the light, they were still walking and approaching the light.

Q. And we have reference of course to the traffic signal right there?

A. Yes.

Q. The one that controls pedestrians?

A. Yes.

Q. You don't know whether that traffic light was green or red?

A. No, I can't recall right now.

Q. You don't know whether or not other persons were standing on that corner besides the Reverend Shuttlesworth?

A. No, I don't.

Q. Did you see some other persons standing with Reverend Shuttlesworth?

A. Well, Brother Armstrong.

Q. You saw him?

A. Yes, those three.

Q. You saw the Reverend Phifer too?

A. Yes.

[fol. 112] Q. And all of them were standing there at that same time?

A. Well, I never did see them standing.

Q. You saw them approach the corner?

A. Yes.

Q. I mean all of them were together about the same time?

A. Yes.

Q. Did you remain in that vicinity during the time that the Reverend Phifer was arrested?

A. Yes, I did.

Q. Will you tell the court the circumstances of that arrest?

A. Well, I wasn't watching Reverend Phifer, I was looking at Reverend Shuttlesworth and I don't know how Reverend Phifer got arrested.

Q. You don't.

A. No.

Q. You didn't hear any conversation between Reverend Phifer and the officer?

A. No, I didn't.

Q. You were working at Loveman's during that time?

A. Yes.

Q. Loveman's is a department store in downtown Birmingham?

A. Yes.

Q. Would you say it is perhaps the largest store in the Birmingham area?

A. Well, it is supposed to be.

Q. Did you know at that time that there was a selective buying campaign being carried on by the Negroes in the City of Birmingham?

A. Well, that I really don't know.

Q. Do you recall hearing this matter discussed in your department store at any time?

A. No, I don't.

Q. Do you remember seeing Negroes at all in Loveman's Department Store during this time?

A. I really don't work in the department store. I work [113] in the warehouse.

Q. So, you would have no knowledge of what was going on downtown?

A. No.

Mr. Hall: Thank you very much.

Cross examination.

By Mr. Walker:

Q. Your name is Simpson Hall?

A. That's right.

Q. And you were going south on 19th Street?

A. That's right.

Q. Were you coming from the post office?

A. No. I hadn't been to the post office.

Q. Now, you say that the Defendant Shuttlesworth when he was told to move on, says, "I will go into Newberry's," and went into the side entrance?

A. That's right.

Q. Will you come and point out the side entrance?

A. This would be Newberry's here. (Indicating) It would be this door right here.

Q. Let me ask you this: Is there a side entrance to Newberry's?

A. Yes.

Q. How many entrances do you have on the 19th Street side?

A. On the 19th Street side? There is three if I am not mistaken. There is one on the alley, one in the middle of the store, and this entrance here.

Mr. Walker: That is all.

Redirect examination.

By Mr. Hall:

Q. The entrance you say the Reverend Shuttlesworth went into is located on the corner of 19th Street and 2nd Avenue North, is that right?

A. That's right.

Q. And that is the entrance you indicated in response to Mr. Walker's questions?

A. Yes.

[fol. 114] Q. In your best judgment how far was that entrance from where the Reverend Shuttlesworth was standing when the officer first accosted him?

A. When he told him he was under arrest?

Q. No, when he first told him to move on.

A. Well, I guess maybe from here to the end of that thing there.

Q. From here to the end of this desk?
A. Yes.
Q. In your best judgment how many feet is that?
A. I guess about six feet.
Q. About six feet? Could it be eight or ten?
A. Yes, it could be.

Mr. Hall: Thank you.
Mr. Walker: No more questions.

(Witness excused.)

FRED L. SHUTTLESWORTH, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hall:

Q. Will you state your name and address, please?
A. Fred L. Shuttlesworth, 3164 29th Avenue North.
Q. What is your occupation, Reverend?
A. Minister.
Q. Are you one of the defendants in this case?
A. Yes.
Q. Reverend Shuttlesworth, on April 4th, 1962 did you have occasion to walk down 19th Street in the City of Birmingham at or near 2nd Avenue North at about 10:30 o'clock in the morning?
A. That is correct.
Q. At that time on that date did you have an experience —did an incident occur involving the City Police Department of the City of Birmingham?
A. That is correct.
Q. Will you tell the court what happened, please?
[fol. 115] A. Yes. James Armstrong, Phifer, and I had been up in Federal Court, and after some time after we left we walked down 19th Street. At this particular time we were walking as pedestrians walk approaching the light at the intersection of 19th Street and 2nd Avenue North in Birmingham. Almost instantaneously or simultaneously

with me as I got practically to the corner the officer came out of this door to my right and stepped in front of me. Along with me or beside me were Phifer and Armstrong. I think Armstrong was a little in the rear, as I recall.

The officer got in front of me and he said these words: "Move on." I said, "Move where, Officer?"

He said, "Anywhere but here, but move on." I said, "All right, I will go into the store."

So, immediately I turned and walked into Newberry's, the corner entrance there, and I had gotten approximately four or five steps inside the store and this same officer puts his hand on my right shoulder I believe and said, "You are under arrest."

And I said, "All right, sir."

He took me then to the curb line on 19th Street and there we stood for a few minutes.

Knowing I was under arrest and had to have bail and bond, I called Phifer and beckoned for him at the same time. I think he was standing at that time nearer Newberry's. I think he was up near Armstrong. Armstrong was standing besides Newberry's and Phifer was between the corner and Newberry's. I called his name and beckoned to him concerning getting a bail bonding company and checking with the attorney, and he came up and I started telling him what to do and the officer said to him, "You can't talk to him," or something like that, "or you are under arrest." And so, almost instantaneously he was under arrest too.

Then they put us I believe in a squad car on the 19th Street side, as I recall now, and we sat there for awhile and then they took us away.

Q. Reverend, had you seen this officer before he arrested [fol. 116] you on that morning?

A. I can't say that I saw him. There were several officers in that vicinity at that time.

Q. Several officers in the vicinity?

A. Yes. I mean I didn't know particularly whether that was the one I had seen or not.

Q. When you say officer you are of course referring to the police officer?

A. Yes.

Q. Did you know that officer's name at that time?

A. Not at the time.

Q. Do you know his name now?

A. I believe Officer Byars.

Q. Officer Byars?

A. Yes.

Q. That is the same officer whom you heard testify here?

A. Yes.

Q. Concerning the facts or the alleged facts of your arrest?

A. That's right.

Q. On this morning, Reverend Shuttlesworth, of April 4, 1962 had you reached the corner of 2nd Avenue and 19th Street?

A. I was approaching the corner. I guess I was a step or two away. See, the officer got in front of me, so, he was nearer the curb than I was, and I was right at the corner. So, he came and walked beside me and got in front of me. Had I walked on I would have walked into him.

Q. What we want to know, Reverend, were you still in motion when the officer appeared, or had you come to rest? Were you still walking or were you standing when the officer came up?

A. I would say I was approaching within a step or two of the corner.

Q. Then you were still walking, is that right?

A. Yes.

Q. And the officer came out and placed himself in front of you?

A. In front of me and the curb, yes.

[fol. 117] Q. Do you recall what the traffic signal indicated there at that corner at that time?

A. I think it was changing.

Q. It was changing at that time as you came up?

A. Yes, and we were slowing up, but at the same time I was observing traffic he was coming in so that my attention was on him.

Q. Did he address you by name?

A. No.

Q. Do you recall how many other persons were there at that corner?

A. With me James Armstrong, Phifer and I were right together, and I don't—things moving so swiftly there, I don't recall. There was two or three behind us, and there might have been another person or two on the corner at the time of my arrest.

Q. Do you have any recollection as to whether there were any white persons there on the corner at this time?

A. I would think so.

Q. You don't recall?

A. No.

Q. Do you remember whether or not traffic was heavy at that corner on the morning in question?

A. You mean pedestrian traffic?

Q. Yes.

A. No.

Q. There was no heavy pedestrian traffic that morning?

A. No.

Q. In either direction, neither up and down 19th Street or up and down 2nd Avenue?

A. There was not.

Q. Traffic was very light, is that what you are saying?

A. That's right.

Q. Did you stand there at the corner one or two minutes before the officer came up to arrest you?

A. I couldn't have stood at the corner one or two minutes. I was approaching the light.

Q. Did you?

[fol. 118] A. No.

Q. How long between the time you approached that corner and the officer appeared and the time you were arrested?

A. It couldn't have been over fifteen or twenty seconds. I guess it would have to be time for him to say, "Move on," and I to say, "Move where, Officer," and he said, "Anywhere but here, but move," and I said, "All right, I will go into the store." And I immediately just whirled and went into the store and it couldn't have been any length of time.

Q. In your best judgment then how long was it?

A. Maybe fifteen or twenty seconds.

Q. Could it have been as much as a minute?

A. From the time he said to me—

Q. From the time he approached you and the time he arrested you.

A. Oh, no, because he got to the corner about the time I did or before I did or simultaneous.

Q. And you were under arrest within a minute?

A. Within a half minute almost.

Q. Within a half minute after he appeared?

A. Yes.

Q. Reverend Shuttlesworth, you are fairly well known to the Police Department of the City of Birmingham, are you not?

A. I would say quite well.

Q. You have been frequently arrested because of your activities in the field of civil rights, have you not?

A. That's right.

Q. On the morning in question had you been involved in some civil rights litigations in the Federal Court?

A. I was supposed to have been.

Q. There was a trial then pending in the Federal Court, is that correct?

A. That's right, on my release from jail.

Q. Release from jail? What were the circumstances of your being in there?

[fol. 119] Mr. Walker: We object, Your Honor. That has no bearing on this case.

Mr. Hall: If Your Honor please, we insist it is very pertinent. It goes to our theory the reason for the arrest and the heavy penalty.

Mr. Walker: Your Honor, this is getting far afield from the charge.

The Court: Sustain the objection.

Mr. Hall: We want an exception, your Honor.

Q. Was there wide publicity given to this Federal hearing?

A. Yes.

Q. Had it been published in the newspapers?

A. It had.

Q. Was there publicity over the radio and by way of the television?

Mr. Walker: We object to this.
The Court: Sustained.
Mr. Walker: It serves no purpose.
Mr. Hall: Exception, Your Honor.

Q. How many times have you been arrested by the police of the City of Birmingham because of your civil rights activities?

Mr. Walker: We object, Your Honor. Immaterial.
The Court: Sustain.
Mr. Hall: We except, Your Honor.

Q. After you were arrested on the morning of April 4, 1962 did you at any time resist this arrest?
A. No.
Q. After the Reverend Phifer was arrested did he at any time resist the arrest?
A. He did not.
Q. When were you told why you were arrested?
A. When was I told why?
Q. Yes, or what charge you had been arrested on.
A. I believe the only time that I heard of it—some officer came to the car as Phifer and I were sitting inside discuss-
[fol. 120] ing what they were going to put against us or something like that.
Q. They were discussing the charge to put against you?
A. Yes.
Q. How many officers were present at that time?
A. I believe two was in the car and one was standing on the outside that came up from where we had been standing. There were some more on that side too.
Q. Do you recall how many were on that side?
A. You mean all told?
Q. All told, yes, sir. How many officers were in the vicinity of 2nd Avenue and 19th Street at about the time of your arrest on April 4, 1962?

A. Well, let me see. I would think there were around five in that immediate area when I was arrested.

Q. Reverend, we want your best judgment—if you don't remember the exact number, we want your best judgment as to the number.

A. I am saying I think there were—because there were two across the street and this officer came outside and there was one officer at the alley and one across the street on the other side across the street from the alley, and then there was one I believe across diagonally from the corner where we were arrested, and in the area there had to be at least five officers when I was arrested.

Q. Is that your best judgment?

A. Yes, of course.

Q. Did they all come over to the corner when you were arrested?

A. During the time or after I was arrested, yes.

Q. They came over to that corner?

A. Yes, around the corner.

Q. Did they all participate in your arrest?

A. You mean did they all restrain me some way?

Q. Consult with each other?

A. Yes.

Q. And discussed the charge to be put against you?

A. Yes.

[fol. 121] Q. Aid and abet each, or whatever officers do in making an arrest, they all consulted and got together?

A. They discussed it and were talking, yes.

Q. Reverend Shuttlesworth, had you gotten into Newberry's Store when the officer arrested you?

A. I had gotten at least three or four strides inside the store.

Q. Inside the store?

A. Yes, inside.

Q. Was this the first time he told you you were under arrest?

A. That's right.

Q. Did he ever tell you at any time before he stopped you in that store that you were under arrest?

A. Oh, no.

Q. Did he ever mention arrest before that time?

A. He made only two statements, as I recall, at the corner: "Move on," and "Anywhere but here."

Q. And you turned to go in the store and then he came in the store and told you you were under arrest?

A. That's right.

Q. He never told you before that that you were under arrest?

A. The only time an arrest was mentioned was when he put his hand on my shoulder inside the store and told me I was under arrest.

Q. And he arrested no one else standing on that corner with you?

A. No.

Q. And he arrested no one else subsequently except the Reverend Phifer?

A. That's right.

Mr. Hall: That is all.

Cross examination.

By Mr. Walker:

Q. How far is a stride? You say three or four strides in Newberry's Reverend Shuttlesworth. How far is a stride?

A. Well, I don't know. It depends on how you are stepping.

[fol. 122] Q. Well, in that particular case how far were you in Newberry's?

A. To make it simpler, maybe four or five feet inside the store, or six. I hadn't gone very far inside the store. I was well inside the store, however.

Q. Now, you were coming and walking along 19th Street going south, I believe you testified?

A. That's right.

Q. And I believe you testified that Defendant Phifer, Armstrong, King, and Norris were with you or immediately behind you, is that correct?

A. That is correct.

Q. Where were you all going?

A. It was our intention at that time to go across the street, turn right at Pizitz, and go down that way back down to the motel. We had just left the court, Phifer and Armstrong and I, and these people caught up behind us. It was our intention to go to the right of Pizitz and go on back down to the motel.

Q. What motel were you going to?

A. We discussed going down to Gaston's Motel and have coffee or something.

Q. Gaston's Motel would be the other direction, wouldn't it? Isn't it on 4th? You would have had to turn around to get on 5th or 4th where the motel was?

A. Not if we had gone across the street and turned right at Pizitz—then we would have turned back, yes, down there.

Q. Why would you cross over to Pizitz side?

Mr. Hall: We object to that. He is a free American citizen and has a perfect right to be in downtown Birmingham and go any way or anywhere he wants to go. It has no bearing on this case.

The Court: Well, let him answer.

Mr. Hall: Exception, Your Honor.

A. What was the question?

Q. Why had you chosen to cross the street, which would be further? I am trying to find out for sure where you were [fol. 123] going, or if you were going some place before you got to the Gaston Motel.

A. Why did we want to cross the street?

Q. To get to the Pizitz side of the street.

A. We could have just as easily wanted to go past Pizitz. We just decided to cross the street and go down beside Pizitz corner.

Q. You were meeting anybody?

A. No. Just had got out of court a few minutes earlier.

Q. Where is the Gaston Motel?

A. 16th Street and 5th Avenue North.

Q. And when you were arrested just prior to being arrested where were you walking?

A. On 19th Street between 3rd and 2nd Avenue, going south on 19th Street toward the corner of Pizitz.

Q. And your destination was the Gaston Motel?

A. We had no particular destination. While walking to the corner, I don't know whether it was Armstrong said he hadn't had any breakfast and let's go to the motel and get some coffee, see, and that is why we said okay, we will go on to the motel, cross the street and turn right and go on to the motel.

Q. Then you weren't waiting for a change in the traffic light at the intersection—in other words, if you were going to Gaston Motel, there was no need for the traffic light to be green for you to cross the street?

A. Well, you don't cross on a green light, do you?

Q. Well, if you were going to Gaston Motel there was no need to cross 2nd Avenue? Where is Pizitz located?

A. You are talking about need. I don't know whether there was any need or not. We had just determined to go across the street.

Q. This is the intersection here. Where in regard to this diagram was Pizitz Department Store located?

A. Right below there. Right there. (Indicating)

Q. What corner is that?

A. I guess you would call that the south corner.

[fol. 124] Q. Would that be the southwest corner if this is west and this is south?

A. I believe so.

Q. And if you had crossed with the green light you would have crossed 2nd Avenue?

A. What do you mean by cross with the green light? You mean the walking light?

Q. Yes, the walking light. There has been a lot of testimony here that you stopped here waiting for a light to change. Now, what I want to find out is if you were waiting to cross here on your way to the Gaston Motel?

A. The Gaston Motel has no—

Q. Other than it was your destination?

A. No, we had said coming to the light—Phifer wanted some coffee and that was about the only place we could get it. We couldn't get any downtown.

Q. And you were going to cross with the green light here, is that correct?

A. When the walking light came on, yes.

Mr. Walker: That is all.

Redirect examination.

By Mr. Hall:

Q. Reverend Shuttlesworth, when you left 3rd Avenue going down 19th Street toward 2nd Avenue were you headed to Gaston's Motel?

A. No.

Q. Where were you going then?

A. Just downtown looking.

Q. Downtown?

A. Yes.

Q. When you approached 2nd Avenue and 19th Street was it your intention—well, we don't ask that. What happened as you approached 2nd Avenue and 19th Street?

A. We were coming to the edge of the curb, practically the edge of the curb.

[fol. 125] Q. Were you going across 2nd Avenue?

A. We were going to cross 2nd Avenue.

Q. Down 19th Street towards 1st Avenue, is that correct?

A. That is correct.

Q. And you were stopped there by the policeman?

A. That is correct.

Q. In your best judgment was the light on that corner with you or against you—the traffic control light?

A. I think it was changing when we approached the corner.

Q. When you say changing, it was turning red so you would have had to come to a stop?

A. Yes.

Q. You remember that?

A. Yes.

Q. But that was not stopped you, was it; the officer stopped you, is that correct?

A. The officer stopped me. I would have had maybe another step or two to the curb.

Q. He stopped you before you got to the curb and told you to move on? Were you in fact going toward Pizitz Department Store?

A. Toward the corner, yes.

Q. Do you recall, Reverend, if there was a selective buying campaign going on in the City of Birmingham at that time which was carried on by the Negro citizens of this community against the downtown stores?

A. There was.

Q. You know that that is true?

A. That's right.

Q. On this date and during this time did you see many Negroes in town at all?

A. Very very few.

Q. And there were quite a few officers in and about this vicinity?

A. Yes.

Q. Now, 2nd Avenue and 19th Street and 3rd Avenue and [fol. 126] 19th Street would be considered the heart of the downtown shopping district, would it not?

A. Yes.

Q. And ordinarily there would be many Negroes in that area?

A. Yes, and white.

Q. But on this occasion there were very few?

A. Extremely few.

Q. At that time had there been leaflets circulated among the Negroes urging them to not shop in downtown Birmingham?

A. There had been.

Q. You had seen such leaflets?

A. Yes.

Q. Do you know whether or not Negroes were abiding by the request of the persons who circulated these leaflets?

A. Yes.

Q. Now, you have testified that the three of you had decided to go across 2nd Avenue to Pizitz. That is a department store, is it not?

A. That's right.

Q. Pizitz is located on the south side of 2nd Avenue and on the corner of 2nd Avenue and 19th Street?

A. That is correct.

Q. And in order to get to Pizitz Department Store you would have to cross 2nd Avenue and 19th Street, is that correct?

A. That is correct.

Q. You never did get to Pizitz Department Store, did you?

A. No.

Q. On that particular occasion?

A. We did not.

Q. Did I understand you on cross examination to tell Mr. Walker that the three of you had discussed going to Pizitz and then going down to the Gaston Motel?

A. Yes. Phifer mentioned he had had no breakfast at all and a cup of coffee would do, and we had to go somewhere [fol. 127] else to get this; we couldn't get it down there.

Q. And I believe Mr. Walker brought out on cross examination that Gaston Motel was at 16th Street and 5th Avenue North?

A. Yes.

Q. Which would be quite a few city blocks from the place where all this occurred?

A. Yes.

Q. Now, I will ask you if the Gaston Motel—is that the A. G. Gaston Motel?

A. Yes.

Q. Is that a colored institution?

A. Yes.

Q. That belongs to Negroes?

A. Yes.

Q. They serve Negroes there in their cafe?

A. That's right.

Q. Why was it necessary for you to leave 19th Street and 2nd Avenue and go to 16th Street and 5th Avenue to get a cup of coffee?

Mr. Walker: We object to that, Your Honor, why.

Mr. Hall: Mr. Walker brought it out on cross examination. He made a big show of the distance.

The Court: Leave it out.

Mr. Hall: We want an exception, Your Honor.

Q. Are there any restaurants in the vicinity of 2nd Avenue and 19th Street North which serve Negroes?

A. Not to my knowledge, or not at that time.

Mr. Hall: That is all.

Recross examination.

By Mr. Walker:

Q. Reverend Shuttlesworth, why were you going to Pizitz?

A. For the same reason anybody else would go.

Q. Well, they had this selective buying campaign on. Were you going to make some purchases in Pizitz?

[fol. 128] A. I don't know what I would have decided to do after I got over there.

Q. You didn't have any plan or any reason to go to Pizitz, you were just going to Pizitz?

A. You might say that.

Q. Isn't it a fact you just now, realizing the route to Gaston, that instead of having been the content at the time, you just presently formed the intent to go to Pizitz?

A. I knew where Gaston Motel was a long time ago.

Q. And that is where you were going?

A. No, we were near the corner when Phifer mentioned he hadn't had any coffee.

Q. Well, were you going to Gaston or going to Pizitz? Did this suggestion for coffee come up before or after you were arrested?

A. Just before.

Mr. Hall: Excuse me. I object to this particular argument on this ground: The witness testified in answer to your first question he was going to Pizitz and then to Gaston. That was on your cross examination.

Mr. Walker: I don't believe he answered that.

Mr. Hall: We could let the reporter read it back and I think you will see he did say he was going to Pizitz and then to Gaston.

Q. Were you going to get coffee at Pizitz?

A. As I understand it, they don't serve coffee to Negroes at Pizitz.

Q. Then that would just kill time so you would be hungry when you got to Gaston's?

A. That is your interpretation.

Mr. Walker: No further questions.

Mr. Hall: That is all.

(Witness excused).

James S. Phifer, called as a witness, being first duly sworn, was examined and testified as follows:

[fol. 129] Direct examination.

By Mr. Hall:

Q. Is this the Reverend James S. Phifer?

A. It is.

Q. Reverend, are you one of the defendants in this cause?

A. I am.

Q. Will you give us your address, please?

A. 22 17th Avenue South, Birmingham, Alabama.

Q. You are a minister?

A. I am.

Q. Reverend Phifer, on April 4, 1962 at about 10:30 in the morning were you in the vicinity of 19th Street and 2nd Avenue North in the City of Birmingham, Alabama?

A. I was.

Q. Will you tell the court what, if anything, occurred at that time and on that occasion?

A. At that time and on that occasion we came from the court house—probably not court house, but the post office—

Q. Reverend Phifer, may I ask you this one question: When you say we do you mean to refer—will you identify everyone with you by name?

A. Reverend Shuttlesworth and Armstrong.

Q. Just the three of you?

A. The three of us.

Q. Were proceeding from the post office?

A. Yes.

Q. Where is the post office located?

A. On 19th Street and 5th Avenue.

Q. North?

A. North.

Q. And you started from the court house and you left the post office and walked down 19th Street in the city of Birmingham—now, you walked from 5th Avenue on 19th Street toward 4th Avenue, 3rd Avenue and 2nd Avenue and 1st Avenue—you were walking south, is that right, on 19th Street?

[fol. 130] A. South, yes.

Q. Go ahead and tell the court what happened from that point.

A. Well, as we were approaching the intersection of 19th Street and 2nd Avenue an officer walked from our right and stepped just before Reverend Shuttlesworth just before we got to the curb and told him to keep moving. He asked him, "To where, Officer?"

He said, "Anywhere but here." And he said, "I will go in the store."

And he turned to go in the store and I turned. Shortly after he turned and he entered just inside the door of the

entrance and the officer walked inside the door and put his hand on his shoulder and said, "You are under arrest."

And he said, "Well, I am under arrest then."

And he carried him over to the curb of 19th Street and stood him on the curb, and at that time he said, "Phifer, come here."

Q. When you say he said it—

A. Reverend Shuttlesworth.

Q. That is the Defendant Shuttlesworth here?

A. Right.

Q. Go ahead. And he was beckoning to you?

A. He called my name and said, "Phifer, come here." And I walked over within three or four steps of him and he was telling me to call the bailing and bonding company to come bond him out, and just as he said, "Call bailing and bonding company—" before I answered him or said anything back to him in reply the officer said, "You can't talk to him unless I arrest you with him."

And I stood there to hear what he was going to say and he said, "You are under arrest." And he put me over on the curb with him.

Q. They then took you on to jail?

A. Yes.

Q. Did he tell you at that time why he was arresting you? Did he place any charge on you then?

A. No, he did not tell me.

[fol. 131] Q. When did you find out why you had been arrested?

A. Well, later in the car I heard.

Q. Later in the car?

A. Yes.

Q. Isn't it a fact that the charges hadn't been placed on you until later on when your attorneys and bondsmen came to the city jail to get you out?

A. Yes.

Q. They had to place a charge on you then so they could place a bond, isn't that correct?

A. Right.

Q. Reverend Phifer, when you refer to officer do you mean a police officer of the City of Birmingham, Alabama?

A. I do.

Q. Did you know the arresting officer at the time you were arrested?

A. No, sir, I didn't.

Q. Do you know him by name now?

A. Officer Byars.

Q. That is the same Officer Byars who testified in this court?

A. It is.

Q. Now, Officer Byars says that—you heard him, you sat here at the table and heard the Officer Byars testify—he testified he spoke three times to F. L. Shuttlesworth or to the crowd on the occasion of you standing on that corner there at 2nd Avenue and 19th Street and he said, "I am telling you for the first time and second time and third and last time to move." Did you hear him say such a thing?

A. I did not.

Q. How long had you stood there at that corner before the officer approached?

A. I didn't stand at all.

Q. He was there by the time you got there?

A. Right.

[fol. 132] Q. Now, where was the first point at which you saw Officer Byars on the morning of April 4, 1962?

A. When he came out of the store to my right.

Q. Out of the Newberry's Store to your right?

A. Yes.

Q. Had you seen him earlier on 19th Street down around the alley at any place?

A. Not to my knowledge.

Q. Had you observed him anywhere along 19th Street as he might have been observing you as you walked along?

A. Not to my knowledge.

Q. And you are saying, sir, that at the same moment you arrived at the corner of 2nd Avenue and 19th Street Officer Byars arrived there, is that what you said?

A. When I saw him he was coming out around the entrance to my right.

Q. Were you already on the corner?

A. We were approaching the corner. We hadn't stopped.

Q. So, when you got to the corner he got to the corner about the same time?

A. Just before we got to the curb he stepped around in front of Reverend Shuttlesworth.

Q. He stepped around in front of Reverend Shuttlesworth?

A. Yes.

Q. Did I understand your testimony—what were his words when he stepped around in front of him?

A. He said, "Keep moving."

Q. Was he addressing his words to the crowd in general or was he looking at the Reverend Shuttlesworth?

A. He was looking at Reverend Shuttlesworth and standing directly in front of him.

Q. And when he said, "Keep moving," what did the Reverend Shuttlesworth say?

A. He said, "Where, Officer?" He said, "Anywhere."

Q. And then what happened?

[fol. 133] A. He said, "I will go in the store." And he whirled immediately to go in the store and I turned around also and Reverend Shuttlesworth started in the door and he put his hand on his shoulder and said, "You are under arrest."

Q. How long did this little interchange take in point of time?

A. Within seconds.

Q. Are you saying it didn't take a minute?

A. No, it didn't take a minute.

Q. That is from the time the officer walked up to the intersection and until the time he reached over and told the Reverend Shuttlesworth that he was under arrest, is that correct?

A. Correct.

Q. Less than a minute?

A. Yes.

Q. At this time were you and the Reverend Shuttlesworth involved in some civil rights litigation in the Federal Court?

A. Yes, we were.

Q. Was it given wide publicity in the daily newspapers?

A. It was.

Q. Would you say headlines?

A. Sure.

Mr. Walker: We object to this line of questioning. It is immaterial about a proceeding being held in Federal Court.

Mr. Hall: We think it is very material.

The Court: Please leave it out.

Mr. Hall: We want an exception, Your Honor.

Q. Reverend Phifer, have you been arrested many times by the city police in the City of Birmingham?

A. Yes, I have.

Mr. Walker: We object to that, Your Honor. It has no bearing how many times the defendant has been arrested.

The Court: Sustain the objection.

Mr. Walker: And move to exclude the answer.

The Court: Sustained.

[fol. 134] Mr. Hall: We want an exception, Your Honor.

Q. Reverend Phifer, are you very well known by the city police of Birmingham because of your civil rights activities?

A. I would say yes.

Q. Directing your attention to the corner of 2nd Avenue and 19th Street on the morning of April 4, 1962, had you seen any Negroes in that vicinity other than your group?

A. Not to my knowledge.

Q. How many policemen had you seen along that street as you walked down that street?

A. Well, I saw probably four or five, in different directions.

Q. Was that an unusual number of policemen for that particular section at that time of morning?

A. To my knowledge it was.

Q. You are familiar with that area, aren't you?

A. Yes.

Q. You had walked along that street many times?

A. Yes.

Q. You had never been molested before for walking along that street, had you?

A. No.

Q. You had stood on corners and waited for lights to change, had you not?

A. Yes.

Q. Had you had occasion to stand on corners as long as two or three minutes and wait on lights to change at other times?

Mr. Walker: We object to standing on corners at other times. The only thing material is this occasion.

Mr. Hall: We contend all this other is material. This is not a simple case of just obeying an officer.

The Court: That is all he is charged with and we will stick to the charge and I guarantee you you will be safer when you get to Washington.

Mr. Hall: We want an exception, Your Honor.

[fol. 135] The Court: You have it.

Q. Reverend Phifer, when the Reverend Shuttlesworth turned after the officer accosted him on the occasion in question did you turn with him?

A. I turned immediately after he turned.

Q. When you say immediately after what do you mean?

A. When he turned to go into the store I turned too.

Q. To go into the store also?

A. Not necessarily.

Q. Where did you proceed—to what point did you go?

A. Well, after he put his hand on his shoulder and said, "You are under arrest," I walked across—would you mind me pointing out?

Q. No. Would you please let the record show this witness is pointing to Defendant's Exhibit 1 purporting to be a diagram of the area in question.

A. When he approached this intersection and he told him to keep moving he said, "Where?" and he told him, "Any place." And he said, "I will go in the store," and he turned to walk in the store.

Q. How far away was the entrance to the store in your best judgment?

A. I will say probably eight or nine feet, and he stepped inside the door. I don't know how far the officer walked in, and laid his hand on his shoulder and said, "You are under arrest."

Q. Were you near him when he laid his hand on his shoulder?

A. I had turned around a couple steps toward the entrance and he carried him over to the curb and I stood beside the building just opposite the door and he was standing with Reverend Shuttlesworth somewhere in this area. (Indicating)

Q. When you say somewhere in this area will you identify where you are pointing?

A. 19th Street about twelve or fourteen feet from the corner.

Q. Twelve or fourteen feet from the north curb of 2nd [fol. 136] Avenue along 19th Street?

A. Yes.

Q. That is north of the intersection there of 2nd Avenue and 19th Street?

A. Yes.

Q. And the officer was holding Reverend Shuttlesworth right there?

A. Yes.

Q. And the Reverend Shuttlesworth then did what?

A. Just stood there.

Q. What happened then, if anything?

A. He called me and beckoned for me to come to him.

Q. All right. What did you do?

A. I walked over within probably three feet of him and he was telling me to get in touch with the bail bonding company to bond him out.

Q. And that is when the policeman arrested you?

A. And the police interfered and said, "You can't talk to him." And I remained standing, I didn't move immediately, and he said, "You are under arrest."

Q. You knew at the time that this occurred there was a selective buying campaign instigated by the Negro citizens of this city against the downtown stores, did you not?

A. I did.

Q. And to your knowledge were Negroes going to the stores downtown? Were they doing any trading in the downtown area?

A. Well, few, if any.

Q. Did you see any doing any buying on the morning in question?

A. No, I didn't.

Mr. Hall: That is all.

Mr. Walker: No question.

(Witness excused.)

Mr. Hall: That is our case, Your Honor.

Mr. Walker: Your Honor, we would like to recall Officer [fol. 137] Renshaw for just one question.

REBUTTAL TESTIMONY ON BEHALF OF PLAINTIFF

Officer JAMES P. RENSHAW, recalled as a witness, being previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Walker:

Q. This is Officer Renshaw?

A. Officer James P. Renshaw.

Q. I believe you were sworn yesterday?

A. Yes, sir.

Q. And you testified yesterday, is that correct?

A. Yes, sir.

Q. I want to ask just one question, Officer Renshaw. Describe to the court the time interval on the traffic light at 2nd Avenue and 19th Street North. First, is that where the defendants were arrested?

A. That is correct.

Q. Then, if you would, describe the time intervals on the traffic light at that intersection.

A. Now, I can't say exactly what those lights are set at.

Q. Do you know what they were set at on April 4th?

A. I can't say exactly what they were set at. I can estimate.

Q. All right. Give your best judgment.

Mr. Hall: If Your Honor please, we object. The best evidence is the actual record of the setting of the lights. That could be obtained. It is in the possession of the City in one of their departments.

Mr. Walker: We withdraw the question. That is all. Come down.

(Witness excused.)

Mr. Walker: The City has nothing further, Judge Bailes.

Mr. Billingsley: Your Honor, at this time we would like to renew our motion to exclude the evidence and enter a judgment for the defendants in this case.

[fol. 138] The Court: Overruled.

Mr. Billingsley: Take exception, Your Honor.

Mr. Hall: We are through, Your Honor.

Mr. Walker: The City is through. We don't care to argue.

Mr. Hall: We will submit on the testimony.

The Court: Very well. Thank counsel. I will consider the matter further.

(After a recess the following occurred:)

(The judgment and sentences of the court were read by the Court in open court.)

STIPULATION

(It was stipulated by counsel in open court and with the approval of the Court that defendants have an exception to each adverse ruling in the minute entries and to rulings on oral objections in the trial.)

Mr. Billingsley: If Your Honor please, the defendants in both cases file now their motion for a new trial and ask the Court to suspend sentencing pending hearing on these motions.

The Court: Identical motions asking for a new trial?

Mr. Billingsley: Yes, sir.

The Court: I will enter these further entries. October 30, 1962, the defendant files motion for new trial; motion overruled; and I take it that the defendants give notice of appeal?

Mr. Billingsley: Yes, sir, and take exception to the ruling on the motion for new trial.

The Court: And the appeal bond is fixed in the sum of $300.00.

THE FOREGOING WAS ALL THE TESTIMONY AND PROCEEDINGS IN THE CASE

* * *

[fol. 139] Court Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 140] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 141]

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

No. 23953

F. L. SHUTTLESWORTH,

vs.

CITY OF BIRMINGHAM.

ASSIGNMENTS TO ERROR

1. The Court erred in denying and overruling the defendant's Motion to Quash the affidavit, warrant and/or complaint filed in this cause (Tr. 3, 4, 10, 15, 16).

2. The Court erred in denying and overruling the defendant's demurrer to the affidavit, warrant and/Or complaint filed in this cause (Tr. 5, 6, 10, 16).

3. The Court erred in denying and overruling the defendant's Motion to Exclude the Testimony and For Judgment (Tr. 7, 10, 81, 137, 138).

4. The Court erred in denying and overruling defendant's Motion for New Trial (Tr. 8, 9, 11, 138).

5. The Court erred in sustaining the objections by the City of Birmingham as to reasons for the arrest and conviction of the appellant, especially regarding his civil rights activities (Tr. 118-134).

Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Appellant.

Certificate of service (omitted in printing).

[fol. 142]

IN THE COURT OF APPEALS OF ALABAMA

JUDICIAL DEPARTMENT

OCTOBER TERM, 1964

6 Div. 929

F. L. SHUTTLESWORTH,

v.

CITY OF BIRMINGHAM.

Appeal From Jefferson Circuit Court

January 25, 1963

Transcript Filed

April 18, 1963

Come the parties by attorneys, and submit this cause on briefs for decision.

JUDGMENT—November 19, 1963

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs

and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the Appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 143]

IN THE COURT OF APPEALS OF ALABAMA

JUDICIAL DEPARTMENT

OCTOBER TERM, 1963-64

6 Div. 929

F. L. SHUTTLESWORTH,

v.

CITY OF BIRMINGHAM.

Appeal From Jefferson Circuit Court

PER CURIAM OPINION—November 19, 1963

Appellant, Fred L. Shuttlesworth, appeals from a conviction by the Circuit Court of Jefferson County, Alabama, of violating Sections 1142 and 1231 of the General City Code of Birmingham, Alabama. The case was heard by the Circuit Judge sitting without a jury. The first count of the complaint charges the appellant with loitering on a street corner with others so as to obstruct free passage along the sidewalk. The other count charges appellant with failure to obey the lawful command of a police officer.

[fol. 144] Section 1142 of the General City Code of Birmingham, Street and Sidewalks to Be Kept Open For Free Passage, reads:

"Any person who shall obstruct any street or sidewalk or part thereof in any manner not permitted by this code or other ordinance of the city with any animal or vehicle, or with boxes or barrels, glass, trash, rubbish or display of wares, merchandise or sidewalk signs, or other like things, so as to obstruct the free passage of persons on such streets or sidewalks or any part thereof, or who shall assemble a crowd or hold a public meeting in any street without a permit, shall, on conviction, be punished as provided in Section 4.

"It shall be unlawful for any person or any number of persons to so stand, loiter or walk upon any street or sidewalk in the city as to obstruct free passage over, on or along said street or sidewalk. It shall also be unlawful for any person to stand or loiter upon any street or sidewalk of the city after having been requested by any police officer to move on."

Section 1231 of the General City Code of Birmingham, Obedience to Police, reads as follows:

"It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of a police officer."

The evidence, as introduced by the City, tended to show that the defendant was a member of a crowd of about ten or twelve people standing on the corner of 19th Street and 2nd Avenue, North, in the City of Birmingham, and that this crowd was blocking the sidewalk to such an extent that some of the other pedestrians were forced to walk into the street to get around them. The crowd was accosted by one Officer Byars and asked to clear the sidewalk so as not to obstruct pedestrian traffic. The evidence further showed that the crowd remained and when requested to disperse for the third time by Officer Byars, defendant Shuttlesworth said, "You mean to tell me we can't stand here in front of this store?" at which time Officer Byars informed the defendant that he was under arrest. Officer Byars testified that at the

time of the arrest everyone had moved or was moving away except Shuttlesworth. After being told that he was under arrest, Shuttlesworth moved away saying, "Well I will go into the store." Officer Byars then followed Shuttlesworth into Newberry's Department Store and took him into custody.

[fol. 145] The appellant's first two assignments of error addressed to the action of the lower court in overruling appellant's motion to Quash and Demurrers to the complaint were overruled on the authority of *Phifer* v. *City of Birmingham*, 6 Div. 930, Ct. of Appeals Manuscript, which case was combined and tried with this one.

The third assignment of error presented by appellant is that the Court erred in denying and overruling the defendant's motion to exclude the testimony and for judgment. When there is sufficient evidence on the part of the prosecution to make out a prima facie case, a motion to exclude the evidence should be overruled. *Drummond* v. *State*, 37 Ala. App. 308, 67 So. 2d 280.

Appellant's fourth assignment of error was that the court erred in denying and overruling defendant's motion for a new trial. All the grounds set out and argued in appellant's motion for new trial, except ground 11, were grounds of a general nature and were properly overruled as sufficient evidence was introduced for the court to find the defendant guilty under the complaint.

The 11th ground of appellant's motion for a new trial is the same as his fifth assignment of error and reads:

> "The court erred in sustaining the objections by the City of Birmingham as to reasons for the arrest and conviction of the appellant, especially regarding his civil rights activities."

The following objections and rulings of the court thereon are alleged to be error by the appellant:

> "Q. There was a trial then pending in the Federal Court, is that correct?

"A. That's right, on my release from jail.

"Q. Release from jail? What were the circumstances of your being in there?

"Mr. Walker: We object, Your Honor. That has no bearing on this case.

"Mr. Hall: If Your Honor please, we insist it is very pertinent. It goes to our theory the reason for the arrest and the heavy penalty.

[fol. 146] "Mr. Walker: Your Honor, this is getting far afield from the charge.

"The Court: Sustain the objection.

"Mr. Hall: We want an exception, Your Honor.

"Q. Was there wide publicity given to this Federal hearing?

"A. Yes.

"Q. Had it been published in the newspapers?

"A. It had.

"Q. Was there publicity over the radio and by way of the television?

"Mr. Walker: We object to this.

"The Court: Sustained.

"Mr. Walker: It serves no purpose.

"Mr. Hall: Exception, Your Honor.

"Q. How many times have you been arrested by the police of the City of Birmingham because of your civil rights activities?

"Mr. Walker: We object, your Honor. Immaterial.

"The Court: Sustained.

"Mr. Hall: We except, Your Honor."

* * * * * * *

"Q. Why was it necessary for you to leave 19th Street and 2nd Avenue and go to 16th Street and 5th Avenue to get a cup of coffee?

"Mr. Walker: We object to that, Your Honor, why.

"Mr. Hall: Mr. Walker brought it out on cross-examination. He made a big show of the distance.

"The Court: Leave it out.
"Mr. Hall: We want an exception, Your Honor."

The sustaining of the objections to the foregoing questions was proper as such questions were irrelevant and immaterial to the issues involved.

The trial court, therefore, did not err by sutsaining such objections.

The judgment of the Circuit Court is

Affirmed.

[fol. 147]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—December 4, 1963
AND OVERRULING THEREOF—January 7, 1964

Now comes the appellant in the above styled cause, and respectfully moves the Court for a rehearing of this cause, and prays that upon such rehearing, that the Order and Judgment of this Court made and entered on the 19th day of November, 1963, affirming the decision of the Circuit Court of Jefferson County, Alabama, finding appellant guilty of violation of Sections 1142 and 1231 of the General City Code of Birmingham, Alabama, and fixing his punishment and fine at $100.00 and One Hundred Eighty (180) days at hard labor for the City of Birmingham be set aside and held for naught, and that in lieu thereof a Judgment and Decree of this Court made and entered, reversing the said Judgment and sentence of the Circuit Court of Jefferson County, Alabama.

Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

January 7, 1964

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 148] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

SIXTH DIVISION

Ex parte: Fred L. Shuttlesworth

No. 65

FRED L. SHUTTLESWORTH, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

DOCKET ENTRIES

January 22, 1964—Submitted on Briefs

February 20, 1964—Writ Denied (No Opinion)

March 6, 1964—Application for Rehearing Filed

March 26, 1964—Application for Rehearing Overruled

[fol. 149] [File endorsement omitted]

[fol. 150]

IN THE SUPREME COURT OF ALABAMA

SIXTH DIVISION

No. 929

[Title omitted]

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS —Filed January 22, 1964

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

1. Comes the Appellant, by and through his attorneys, Peter A. Hall and Orzell Billingsley, Jr., and respectfully petitions this Honorable Court to review, revise, reverse, and hold for naught that certain Judgment of the Court of Appeals rendered on to-wit: November 19, 1963, wherein

Fred L. Shuttlesworth was Appellant and the City of Birmingham was Appellee, which Judgment affirms a Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 7th day of January, 1964.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Sections 1142, as amended, and 1231 of the General City Code of Birmingham, viz:

Count One

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that F. L. Shuttlesworth, within twelve (12) months before the beginning of this prosecution and within the City of Birmingham, or the police jurisdiction thereof, did stand, loiter or walk upon a street or sidewalk within and among a group of other persons so as to obstruct free passage over, on or along said street or sidewalk at to-wit: 2d Avenue, North, at 19 Street or did while in said group stand or loiter upon said street or sidewalk after having been requested by a police officer to move on, contrary to and in violation of Section 1142 of the General City Code of Birmingham of 1944, as amended by Ordinance Number 1436-F.

[fol. 151] Count Two

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that F. L. Shuttlesworth, within twelve (12) months before the beginning of this prosecution and within the City of Birmingham or the police jurisdiction thereof, did refuse to comply

with a lawful order, signal or direction of a police officer, contrary to and in violation of Section 1231 of the General City Code of the City of Birmingham.

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinances which formed the basis of the prosecution, as applied to Appellant, constituted an abridgment of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinances were unconstitutional on their faces.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty as charged and fined One Hundred Dollars ($100.00) and costs, and sentenced to a term of One Hundred and Eighty (180) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentence, petitioner filed a Motion for a New Trial, which Motion was denied and petitioner perfected his appeal.

7. Petitioner on appeal argued that at the time and place in question, he had done only what he had a constitutional right to do, and that his arrest was an attempt to enforce racial segregation in violation of the U. S. Constitution, but the Court of Appeals discounted their argument and affirmed his conviction.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional in that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty without due process of law, in

violation of the Fourteenth Amendment to the United States Constitution.

[fol. 152] B. That the Ordinance and Complaint, the basis of the prosecution and conviction, as applied to petitioner, constitutes an abridgment of the privileges and immunities, and a denial of due process of law, the equal protection of the laws, all in violation of the Fourteenth Amendment to the United States Constitution.

Wherefore, your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmation of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

[fol. 153] *Duly sworn to by Peter A. Hall, jurat omitted in printing.*

Certificate of service (omitted in printing).

[fol. 154]

IN THE SUPREME COURT OF ALABAMA

6th Div. 65

The Court Met Pursuant to Adjournment

Present: All the Justices

Ex Parte: Fred L. Shuttlesworth

Petition for Writ of Certiorari to Court of Appeals

(Re: Fred L. Shuttlesworth vs. City of Birmingham)

Jefferson Circuit Court

ORDER DENYING WRIT AND DISMISSING PETITION—
February 20, 1964

Come the parties by attorneys and the Petition for Writ of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court, it is considered and ordered that the Writ be and the same is hereby denied and the petition dismissed at the cost of the petitioner, for which costs let execution issue accordingly.

No Opinion

[fol. 155] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

SIXTH DIVISION

No. 65

APPLICATION FOR REHEARING—Filed March 6, 1964

Now comes petitioner, in the above-styled cause, and respectfully moves this Honorable Court to grant to him a Rehearing in said cause, and reverse, revise and hold for naught its Judgment rendered on to-wit: the 20th day of February, 1964, denying petitioner the Writ of Certiorari

and his petition, and to enter an Order reinstating petitioner's said petition, and directing that a Writ of Certiorari be issued out of and under the Seal of this Court, to the Court of Appeals of Alabama, to the end that this cause may be reviewed and determined by this Honorable Court.

Petitioner further moves the Court to grant a Stay of Execution in this cause, during the pendency of this Application for Rehearing.

Submitted herewith is a Brief and Argument, in support of said Motion.

Peter A. Hall, Orzell Billingsley, Jr., 1630 Fourth Avenue, North Birmingham, Alabama 35203, Attorneys for Appellant.

[fol. 155a]

IN THE SUPREME COURT OF ALABAMA

6th Div. 65

The Court Met Pursuant to Adjournment

Present: All the Justices

Ex Parte: Fred L. Shuttlesworth

Petition for Writ of Certiorari to Court of Appeals

(Re: Fred L. Shuttlesworth vs. City of Birmingham)

Jefferson Circuit Court

ORDER OVERRULING APPLICATION FOR REHEARING—
March 26, 1964

It Is Ordered that the application for rehearing filed in the above styled cause on March 6, 1964, be and the same is hereby overruled.

[fol. 156] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 157] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 158]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1963

FRED L. SHUTTLESWORTH, Petitioner,

vs.

CITY OF BIRMINGHAM.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 19, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 23, 1964

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 19th day of June, 1964.

[fol. 159]

SUPREME COURT OF THE UNITED STATES

No. 423—October Term, 1964

FRED L. SHUTTLESWORTH, Petitioner,

v.

CITY OF BIRMINGHAM.

ORDER ALLOWING CERTIORARI—March 1, 1965

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.